

# **EXHIBIT AA**



# CRIME FRAUD HEARING

# What Must The Court Decide on Prima Facie Case?

**Is there “a **reasonable basis** to suspect that the privilege holder (Engelhard/BASF) was committing or intending to commit a crime or fraud”\*\* in violation of 2A:84A-20(2)?**

**\*\**In Re Grand Jury*, 705 F.3d 133 (3d. Cir. 2012)**

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# N.J. Substantive Crime Fraud Law Applies

**“Rule 501, as it applies to federal civil cases, incorporates the doctrine of *Erie R.R. Co. v. Tompkins*, and requires deference to any applicable **state law governing privileges.**”**

**“In this diversity case [Rule] 501 refers the district court, on **questions of privilege**, to **state law.**” *In re Grand Jury Investigation*, 918 F.2d 374, 379 n.6 (3d Cir. 1990) *United Coal Cos. v. Powell Constr. Co.*, 839 F.2d 958, 964 (3d Cir. 1998).**

***Newman v. GM*, No. 02-135, at pp. 60 (D.N.J. 2005)  
applying **NJSA 2A:84A-20**  
and citing ***Fellerman v. Bradley & Jadowski v. OCF*****



## 2A:84A-20. Lawyer-client privilege.

(2) Exceptions. Such privilege shall not extend (a) to a **communication in the course** of legal service sought or **obtained** in aid of the commission of a crime or a fraud.

## *Fellerman v. Bradley*



**“Confederating with clients to allow court and counsel to labor under a misapprehension as to the true state of affairs”** is a fraud that comes within the bounds of the exception.<sup>†</sup>

**“Acts constituting fraud are as broad and as varied as the human mind can invent. Deception and deceit in any form universally connote fraud. Public policy demands that the ‘fraud’ exception to the attorney-client privilege as used in Evidence Rule 26 [now N.J.R.E. 504] be given the broadest interpretation.”**

<sup>†</sup> Fellerman v. Bradley, 99 N.J. 493, 503 (1985) (quoting In re Callan, 122 N.J. Super. 479, 496 (Ch.Div. 1973))

# What Must The Court Decide on Prima Facie Case?

**“The burden is not a particularly heavy one”**

**\*\**In Re Grand Jury*, 705 F.3d 133 (3d Cir. 2012)**

# What Must The Court Decide on Prima Facie Case?

**Not required** to introduce evidence sufficient to **support a verdict** of crime or fraud.

**Not required** even to show that it is **more likely than not** that the crime or fraud occurred.

*In re Grand Jury*, 705 F.3d at 152–54 (citing *Zolin*, 491 U.S. at 574–75)



1. New Jersey Superior Court Judges
2. Former Appellate Division Judge
3. Former New Jersey Supreme Court Justice.



New Jersey Courts

Independence • Integrity • Fairness • Quality Service

# Has The Plaintiff Established A Prima Facie Case of Fraudulent Concealment?



The crime-fraud exception applies to “communications in the course of legal service sought or obtained in aid of the commission of a crime or a fraud.” N.J.R.E. 504 (2). This, of course, would include communications establishing an intentional cover-up or concealment. See *Ocean Spray Cranberries, Inc. v. Holt Cargo Systems Inc.*, 345 N.J. Super. 515, 521 (Law Div. 2000). Here, during the hearing on plaintiffs’ motion to amend, **Judge McCormick specifically noted there was evidence that documents reflecting asbestos content in EMTAL’s talc were not produced over a period of twenty years and, as a result, plaintiffs’ cases were dismissed.** In determining that plaintiff had pled a prima facie case of fraudulent concealment, **Judge McCormick intimated that plaintiffs should be able to pursue discovery as to why those documents had been concealed and not produced over the twenty-year period.**



“Where an attorney-client privileged memo contains **evidence or suggestions of false information**, the crime/fraud exception applies. *Nat. Utility Service, Inc. v. Sunshine Biscuits, Inc.*, 301 N.J. Super. 610, 618, App. Div. 1997).”<sup>†</sup>

“Its **campaign to hide the truth** includes Holt’s **refusal to disclose the truth** and its **continued denial of any knowledge** of cranberry spoilage at its warehouse, in both interrogatory answers and the certification of its in house counsel. The “fraud exception to the attorney–client privilege is clearly established.”<sup>†</sup>

<sup>†</sup> *Ocean Spray Cranberries, Inc. v. Holt Cargo Systems, Inc.*, 345 N.J. Super. 515, 525-526 (Law Div. 2000)



“In the case before us, [Owen-Corning’s in-house attorney] answered later interrogatories as a representative of the corporation. **These later answers may have served as evidence of a fraud by Owens-Corning.** One way to prove plaintiff’s claim of fraud was to **show that the corporation indeed had contrary information** six years before the interrogatory answers were rendered.”

*Jadlowski v. Owens-Corning Fiberglas Corp.*, 661 A.2d 814 (N.J. App. Div. 1995), *certif. denied*, 670 A.2d 1066 (N.J. 1996).



# Judge Linares found BASF had a duty to preserve evidence

[T]he Court finds that **Defendants had a duty to preserve**. At issue is whether Defendants had a "legal obligation to disclose evidence in connection with an *existing or pending* litigation" at the time of the alleged spoliation. *Rosenblit*, 166 N.J. at 406 (emphasis added). Cahill and Halket, in essence, argue that the fraudulent concealment claim fails because the evidence was allegedly destroyed at an opportune time: after the "existing" *Westfall* case settled but prior to "pending" (*i.e.*, imminent) litigation. In the Court's view, this misses the mark. The Court declines to delineate the precise contours of the duty to preserve as it existed in 1984, but finds that: **in 1984, a party had a duty to preserve evidence** when it was relevant in a prior lawsuit, and where it was reasonably foreseeable that the evidence would be relevant to anticipated lawsuits of nearly identical subject ."

*Williams v. BASF Catalysts LLC* (ECF 190), *slip. op.* at 12 –13 (D.N.J. Apr. 5, 2016)

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# All of BASF's responses fail to rebut Plaintiffs' case.

## 1. No documents at issue identified.

### ***BASF wrong because:***

- Plaintiffs' CFE motion asked the Court to make the prima facie finding based upon the public record necessary to conduct an *in camera* review. No documents were needed to establish the prima facie case requisite given the public record evidence of BASF's and Cahill's fraud.
- Plaintiff's opening motion brief identified withheld documents at pp.37: **all of the transcripts and documents produced or developed before Justice Stein in the *Sampson* case.** *BASF is fully aware of these documents.*
- Plaintiffs also asked for documents withheld in **Cahill Compilation** (Ex. 3).
- Plaintiffs provided a list of documents to clarify what those documents were (**Appendix C**).

## 2. “In furtherance” standard does not apply.

### ***BASF wrong because:***

- Not the applicable standard under New Jersey law.
- NJ statute provides the standard: **Communications in the course of legal services in aid of clients' commission of a fraud.**
  - Phrase “in furtherance of” **does not appear** in New Jersey's crime-fraud statute's text.
  - New Jersey precedent does not mandate “in furtherance” nexus in determining whether a particular document should be released after in camera review under the crime-fraud exception.

## 5. No evidence to support the CFE

***BASF wrong because the public evidentiary record is clear:***

- Surviving testing records in BASF's possession it now touts **show asbestos was found in numerous samples and BASF and Cahill knew this.**
- BASF's own scientists – Hemstock, Triglia and Gale – in 1983 testified under oath **in the presence of BASF's attorneys** that asbestos fibers were found in Emtal talc.
- Testimony of Swanson and Hemstock and analysis of *Westfall* transcripts **establish internal documents discarded** pursuant to the March 7, 1984 Hemstock "Purge" Memo.
- Copies of Hemstock, Triglia and Gale ***Westfall* transcripts suppressed.**



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# What Must The Court Ultimately Decide?

**Is there “a **reasonable basis** to suspect that the privilege holder ( Engelhard/BASF) was committing or intending to commit a crime or fraud”\*\* in violation of 2A:84A-20(2)?**

**\*\**In Re Grand Jury*, 705 F.3d 133 (3d Cir. 2012)**

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The Court is also permitted to look at the withheld documents in making its decision

**Have the plaintiffs presented “a factual basis adequate to support a good faith belief by a reasonable person that *in camera* review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies”?**

*In Re Grand Jury*, 745 F.3d at 689

**Misrepresenting to Litigants no evidence of asbestos in Emtal**

**Misrepresenting to Courts no evidence of asbestos in Emtal**

**Misrepresenting to Courts and Litigants no prior cases or testimony relating to Emtal**

**Securing dismissals based upon misrepresentations**

**Wrongful destruction and withholding of evidence**

**■ - BASF**  
Crime-Fraud

# Who Was Involved In The Fraud?

**ENGELHARD**

**Cahill Gordon & Reindel LLP**

**BASF**



Engelhard Corporation

Cahill Gordon & Reindel

BASF Catalysts LLC



**Who is correct on the science of whether Emtal testing was state of the art?**

**Defendants now admit evidence of asbestos was not disclosed.**

# What Evidence Supports Prima Facie Evidence of Crime Fraud?

**The strategy to misrepresent information about the asbestos in Emtal originated With Engelhard**

**Engelhard had repeated analysis finding asbestos in Emtal talc**

**Litigation lies and incriminating evidence concealed**

**Securing dismissals based upon misrepresentations**

**Wrongful destruction and withholding of documents**

**■ - BASF**  
Crime-Fraud

# What Misrepresentations Were Made to Customers, Courts & Litigants?

Beginning no later than 1972, customers were told **no trace** of asbestos in Emtal talc

Courts and Litigants told Emtal talc did not contain **any** asbestos

Courts and Litigants told there was **no evidence** of asbestos in Emtal talc

Courts and Litigants told **no Engelhard employee ever testified** concerning asbestos in Emtal talc

Courts and Litigants told of prior fraudulent dismissals as precedent to obtain even further dismissals

 **BASF**

Crime-Fraud  
MISREPRESENTATIONS



# **The Strategy to Misrepresent Information About The Asbestos In Emtal Originated With Engelhard**

# Engelhard Purchased the Johnson Mine in 1967

October 17, 1967

Mr. J. W. Meyers  
Meyers Chemicals, Inc.  
290 Larkin Street  
Buffalo, New York 14120

Dear Mr. Meyers:

Acquisition of the Johnson, Vermont talc operation of Eastern Magnesia Talc Company, Inc. by Engelhard Minerals & Chemicals Corporation became effective September 30, 1967. The Johnson plant will be operated by Eastern Magnesia Talc Company under the supervision of Minerals & Chemicals Division, Menlo Park, Edison, New Jersey.

We plan to handle all sales and orders through our Menlo Park, Edison, New Jersey office.

Although we plan to handle some industries on a direct basis, there are others which we feel can be best served by you.

Attached is a list of customers in your territory who are currently purchasing, or who have purchased, EMTAL products in the last few years. It is our plan to assign these accounts and future carload and warehouse sales to markets excluding cosmetics, rubber, wire and cable, insecticide, petroleum and paper industries to you. Commission rate on all EMTAL products is 5% of the carload price for Johnson, Vermont either bagged or bulk.

Prior to a final decision, please indicate your interest by submitting to us by November 6th a report of your calls on the customers listed and indicate your ability to service these accounts including warehouse backup if necessary.

Attached is a set of data sheets, a price list and competitive information on the EMTALs.

We shall look forward to your reply.

Yours very truly,

R. A. Smith - Manager  
Chemical Distributor Department

RAS/jc  
enc.

EMTAL 0018

BASF\_LOPEZ000001675

**Acquisition of the Johnson, Vermont talc operation of Eastern Magnesia Talc Company, Inc. by Engelhard Minerals & Chemicals Corporation became effective September 30, 1967. The Johnson plant will be operated by Eastern Magnesia Talc Company under the supervision of Minerals & Chemicals Division, Menlo Park, Edison, New Jersey.**





# Customers Made Clear They Did Not Want Asbestos Contaminated Talc

1970 to 1980s

**“Recent publicity has called attention to the hazard of exposure to fibrous forms of talc. We have received several inquiries as to whether the talc used in our plants ...contains asbestos fibers.”**

January 18, 1973


Eastern Magnesium Talc Company  
206 Bank Street  
Johnson, Vermont 05656

Gentlemen:

The following talc compounds produced by your concern are used in some of our plants: #40 Talc, #41 Talc and Grade 44 Talc and Emtal XT-1. Recent publicity has called attention to the hazard of exposure to fibrous forms of talc. We have received several inquiries as to whether the talc used in our plants is of the fibrous type and in particular whether it contains asbestos fibers.

So that we may properly answer these inquiries and ensure that we are taking the necessary control measures if exposure to fibrous type talc is occurring, we would appreciate receiving information on the fibrous content of the above talc.

Sincerely,



L. F. Dieringer  
Corporate Industrial Hygienist

LFD:rg

300006

BASF\_SAMPSON000012417

See examples as Ex. 7

# Customers Made Clear They Did Not Want Asbestos Contaminated Talc

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GENERAL ELECTRIC CO.  
PLASTICS DEPARTMENT  
PLASTIC PRODUCTS  
MATERIALS SPECIFICATION

PLATY TALC  
SQM-334

Description:  
Platy talc pigment, free of asbestos impurities.

Properties:

Oil Absorption, g/100 g, typical value	28/100
Moisture, % maximum, typical value	1%
Specific Gravity, typical value	2.7-2.9
Residue on 200 Sieve, typical value	2-1/2% max.

Referee Method:

Sampling	ASTM-D592
Oil Absorption	ASTM-D281
Moisture	ASTM-D280
Specific Gravity	ASTM-D153
Residue	ASTM-185

Approval:

Vendor Acceptance: By Product Engineering prior to factory trials.

Lot Acceptance: By Quality Control on the basis of conformance to specification given above, and absence of other grossly and obviously unsuitable characteristic(s).

Certification: On request, the vendor shall submit a certificate of test indicating the material conforms to specification.

Approved: *Frank P. Fiorentine*  
F. P. Fiorentine 10/21/73

Issued by: *R. H. Barker*  
R. H. Barker  
1st issue  
10/25/73

ET0002588

BASF\_SAMPSON000006621

GE 1973

The D. F. Goodrich Company  
Akron, Ohio

SPECIFICATION COVERING DUSTING AGENT CODE NO. 21

MATERIAL Talc (Hydrous Magnesium Silicate) Date November 10, 1978

UNIFORMITY

The material furnished to Buyer (The D. F. Goodrich Co.) to this specification shall be equal to the sample on which original approval was based, as determined by Buyer's tests of the physical and chemical properties and, of production processing and performance characteristics. Physical and chemical test methods are specified below; processing and performance characteristics are determined by use in Buyer's operations.

If Buyer's tests indicate that the material furnished does not meet the specification within the tolerances allowed, retests will be conducted by Buyer at his laboratories in the presence of the Seller or his representative if requested by Seller in writing within five (5) days after notification of the results of the first tests.

The Seller shall notify the Buyer immediately in the event of any change in the processes or in the place of manufacture. Buyer reserves the right to require a sample of the material produced under the changed conditions for approval tests before production shipments are made.

SPECIFICATIONS November 10, 1978 (TAS 78P72) PROCEDURE NO.

DUSTING AGENT CHARACTERIZATION

White to gray powder, free flowing.  
Odorless.  
Good dusting agent with excellent slip and coverage.  
Should be kept dry.  
Specific Gravity: 2.90 for BFG calc.

CHEMICAL	MINIMUM	MAXIMUM	
Heat Loss, %	-	0.1	203
Ignition Loss, %	19.5	21.5	222
Alkalinity, %	-	0.05	205
* Crystallinity, %	-	1.0	681
* Asbestos, %	-	0.0	681

PHYSICAL

Sieve Test, % On U.S. No. 200	6.0	552
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CONTAINER MultiWall Paper Bag - 22.7 kg (50 lb.) net.  
Mark each with Code 21-DCD  
Lettering: Min. 2 cm High

Superseding Specification

Dated September 9, 1976

BFG-38 PRINTED IN U.S.A. \*Change from previous issue.

RAW MATERIALS INSPECTION & DEVELOPMENT DEPARTMENT

The B. F. Goodrich Company  
*Alek Vase*  
Alek Vase - Manager (rjs)

PADUANO BASF029

BF GOODRICH 1978

GAF CORPORATION 1361 Alps Road Wayne NJ 07470 1/2/80 201 826 3000

To: WRK please handle  
This account has been handled on a direct basis - roofing material AND floor covering  
December 27, 1979  
Engelhard Minerals & Chemicals Div.  
Menlo Park Edison, NJ 08817  
Attention: Mr. M. Lavell Danok

Subject: TALC PROJECT (STATUS)

Dear Mike;

GAF will require a significant quantity of Talc. At present, indications are that GAF will have a 1980 requirement in excess of 2500 tons and a 1981 requirement in excess of 15,000 tons.

We have received, and are currently evaluating, the following products which you have already submitted for evaluation:

Bental 41  
Bental 42

Please furnish to the writer, as soon as possible, the following information regarding the products listed above: 1) Price; 2) FOB point 3) Availability in 1980, 1981 4) Material data safety information (as available).

Although we have not yet developed a firm specification for our requirements, the following data should serve as general guidelines in recommending additional samples for our evaluation:

1 - at least 50% passing through 200 mesh  
2 - no special treatment incompatible with an aqueous system  
3 - should be classified as devoid of asbestos material

If you feel you have additional product (s) that meet the above "general guidelines", please send a 1 gallon sample along with price availability, FOB point, specifications and material data safety sheet to:

GAF CORPORATION  
1361 Alps Road  
Wayne, NJ 07470  
Attn: Mr. F. Belardo

RECEIVED  
JAN 2 1980  
D. A. SPENCER

Your continued attention and cooperation is greatly appreciated. If you have any further questions, please do not hesitate to contact my office.

Sincerely yours,  
CORPORATE PURCHASING  
*Frank M. Belardo*  
F. M. Belardo  
Buyer

FMB/ck  
An equal opportunity employer

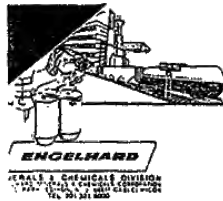
BASF\_SAMPSON000006532

GAF 1980

See examples as Ex. 7

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# In Response Engelhard Repeatedly Assured Customers Emtal Did Not Contain Even a Trace of Asbestos



## Technical Data

### EVALUATION OF OUR EMTAL® TALCS FOR ASBESTOS

The talc mineral mined and produced at the Eastern Magnesite Talc Company is properly classified from the alteration (chloritization) of the major non-talc associated minerals present.

The commercial product grades (Emtal® platy talcs) shipped from the Johnson, Vermont plant have been examined by the most appropriate and sensitive mineralogical diagnostic methods available; and it can be stated with confidence that no trace of any of the asbestos minerals; namely, Chrysotile; Amosite, Anthophyllite, Tremolite, Actinolite, or Crocidolite, and be detected by standard x-ray powder diffraction methods or by Scanning Electron Microscope methods at the highest magnification."

It is occasionally observed that the random character of platy talc mineral sometimes produces, when viewed at relatively low magnification (ca. 45x), an appearance that may be "asbestiform"; however, when viewed at higher magnification with suitable resolution (a) clusters or linear agglomerates of smaller talc platelets viewed on edge, or (c) anisotropic surface texture and fracture habit clearly characteristic of the several asbestos minerals.

Chemical analysis of the Emtal® talc grade by NIOSH-approved Talvite method has disclosed no asbestos minerals. Emtal® talc grades will contain less than 1% asbestos minerals.

smf  
10/78

**"The commercial product grades (Emtal® platy talcs) shipped from the Johnson, Vermont plant have been examined by the most appropriate and sensitive mineralogical diagnostic methods available; and it can be stated with confidence that no trace of any of the asbestos minerals; namely, Chrysotile; Amosite, Anthophyllite, Tremolite, Actinolite, or Crocidolite, and be detected by standard x-ray powder diffraction methods or by Scanning Electron Microscope methods at the highest magnification."**

See examples as Ex. 8–9

RECEIVED  
OCT 18 1978  
C. H. H.

Prepared for Presentation  
To The Autobody Filler  
Manufacturer's Association

## SAFE USE OF EMTAL<sup>®</sup> TALCS IN AUTOBODY FILLER

### Abstract

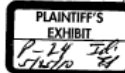
With all dusty, powdered materials, care must be taken to avoid overexposure. We at Engelhard are pleased to report that the platy, asbestos-free Emtal<sup>®</sup> Talcs can be used safely if the controls and precautions necessary with any "nuisance dust" are observed.

### Role of Emtal<sup>®</sup> Platy Talcs in Autobody Filler

The growth of the plastic autobody filler market is the direct result of the excellent performance record of autobody filler products produced by the industry.

The Emtal<sup>®</sup> Talcs play an important role in this performance record. With their platy particle shape and organophilic nature, these talcs mix readily with polyester resins to cut cost and provide the finished compound with minimum shrinkage, film reinforcement, flow control, good trowelability and feathering, and easy shaping and sanding. The Emtal<sup>®</sup> Talcs are inert in this polyester system, so viscosity stability and long shelf life are assured.

At Engelhard's Eastern Magnesite Talc Company, we carefully select, process and distribute these unique talcs to give you consistent products, when needed, where needed, coast-to-coast.



PADUANO

BASF\_LOPEZ000012437

Prepared for Presentation  
To The Autobody Filler  
Manufacturer's Association

## SAFE USE OF EMTAL<sup>®</sup> TALCS IN AUTOBODY FILLER

We at Engelhard are pleased to report that the platy, asbestos-free Emtal<sup>®</sup> Talcs can be used safely if the controls and precautions necessary with any "nuisance dust" are observed.

11/28/1978



# Where Did The Idea Of Misrepresenting Information About The Asbestos In Emtal Originate?

## Engelhard Representations to Customers

“The commercial product grades (the EMTALS) shipped from the Johnson, Vermont plant have been examined by the **most** appropriate and **sensitive** mineralogical diagnostic methods available and it can be stated With confidence that no trace of any of the **asbestos minerals**; namely, Chrysotile, Amosite, Anthophyllite, Tremolite, Actinolite or Crocidolite can be detected by standard X-ray powder diffraction methods or by Scanning Electron Microscope methods at the highest magnification.”

ENGELHARD MINERALS & CHEMICALS CORPORATION  
MATERIAL SAFETY DATA SHEET  
DATE: \_\_\_\_\_  
Section 1 - IDENTIFICATION  
MANUFACTURER'S NAME: ENGELHARD MINERALS & CHEMICALS CORPORATION  
ADDRESS (Street, City, State and ZIP Code): MONROE PARK, EDISON, NEW JERSEY 08817  
CHEMICAL NAME AND SYNONYMS: Magnesium Silicate, Hydrous  
TRADE NAME AND ACRYLATION: \_\_\_\_\_  
CHEMICAL FAMILY: Magnesium Silicate, Hydrous  
FORMULA: 2MgO·4SiO<sub>2</sub>·H<sub>2</sub>O  
Section II - HAZARDOUS INGREDIENTS  
PAINTS, PRESERVATIVES, & SOLVENTS  
Section III - PHYSICAL DATA  
Section IV - FIRE AND EXPLOSION HAZARD DATA  
FLAMMABLE LIMITS: \_\_\_\_\_  
EXTINGUISHING MEDIA: \_\_\_\_\_  
SPECIAL FIRE FIGHTING PROCEDURES: \_\_\_\_\_  
GENERAL FIRE AND EXPLOSION HAZARDS: \_\_\_\_\_  
H.A. - Not Applicable

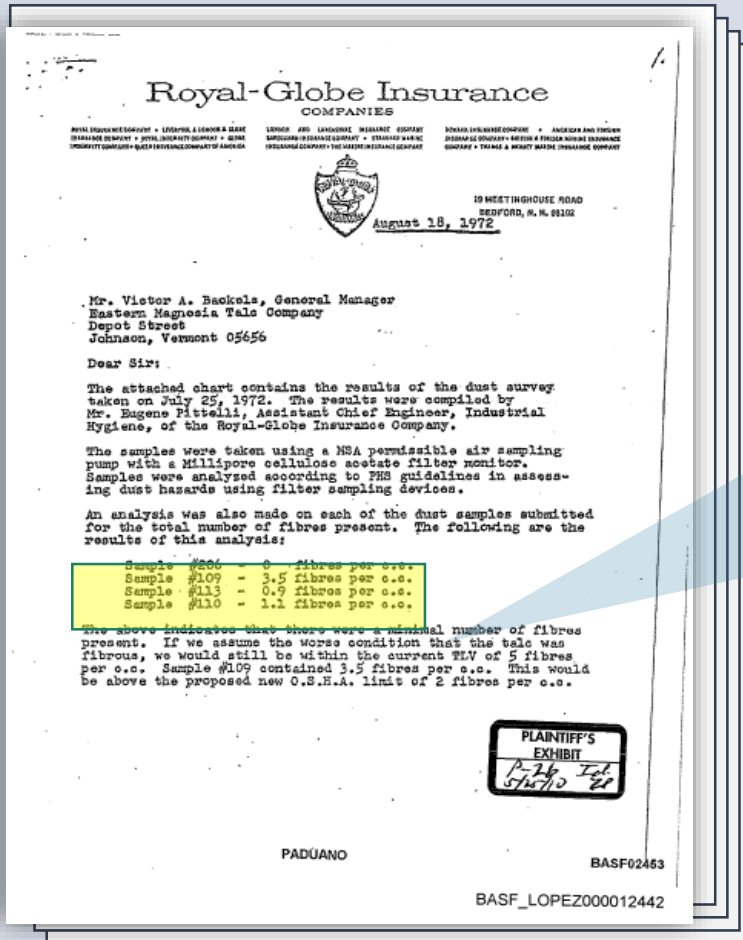
MSDS  
1978

See examples as Ex. 8-9



# Engelhard Received Repeated Analysis Finding Asbestos in Emtal Talc

# Engelhard's Insurance Carriers Found Asbestos in Emtal



1972

Sample #206	=	0	fibres per c.c.
Sample #109	=	3.5	fibres per c.c.
Sample #113	=	0.9	fibres per c.c.
Sample #110	=	1.1	fibres per c.c.

See Ex. 4(a)



RESULTS OF TESTS ON ENTAL MINE WASTE ROCK SAMPLES

Sample No.	73-J-1	73-J-2	73-J-3	73-J-4
Sampling Site	West Side "A" West	West	East	East Side "A"
Identification	Chlorite-	Footwall	Hanging-	Chlorite-
	<u>Schist</u>		<u>Wall</u>	<u>Schist</u>
X-Ray Analysis	Chlorite	Chlorite	Chlorite+	Chlorite
			some quartz	
% Free Silica	0.26	0.10	3.25	0.18
No. Asbestos Fibers counted*	3	4	3	8

06/12/1973

## Asbestos Was Found in Air Samples

## Notes and Specific Instructions:

## Respirable Dust Samples.

Sample No.: The samples were received on millipore filters in cassettes. The millipore filter was cut in half, one half was forwarded to Emil Triglia for shipment to MC crone.

From the second half of the filter, two slides were prepared and evaluated ~~XXX~~ by the NIOSH procedure, counting particles with a 3 to 1 aspect ratio.

Emil Triglia stated that these samples were collected in five minutes using a flow rate of 1.4 l/min. This amounts to 7,000 cc of air being used to collect the sample on a 37 mm filter.

The particles (3 to 1) counted and calculated for these samples are as follows:

Sample No.	particles with ratio of $\frac{3}{1}$ filter	Particles with ratio $\frac{3}{1}$ /cc of
Ent 1	3292	0.5'
Ent 2	16,460	2.3'

02/03/1977



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# Multiple Forms of Asbestos Were Confirmed

The table below shows the count data.

<u>Sample No.</u>	<u>No. of Particles</u>	<u>No. of Fibers</u>
2346-16-1	396	5
2346-16-2	279	3
2346-16-3	406	0
2346-16-4	361	0
2346-16-5	265	0
2346-16-6	250	0

**Tremolite**  
**09/05/1972**

<u>Sample no.</u>	<u>% (wt.) Asbestos</u>	<u>Type of asbestos</u>	<u>Total % wt. fibrous material</u>
E-44-77-A	2	tremolite	3
E-44-77-B	5	tremolite	5
E-44-77-C	3	tremolite	4
E-44-77-D	3	tremolite	4
E-44-77-E	4	tremolite	4
E-44-77-F	2	tremolite	4

**Fibrous tremolite found**  
**05/18/1977**

# Multiple Forms of Asbestos Were Confirmed

Samples I and J were examined by the OSHA Phase Contrast method for fiber counts. Sample I showed a fiber count of 7.08 fibers/cc and sample J 10.2 fibers/cc. The samples were then examined by dispersion staining. Samples I and J both showed the presence of chrysotile asbestos in trace quantities. Microscopical examination revealed the fibers detected by phase contrast were actually glass fibers.

## Chrysotile 3/18/1977

Using selected area diffraction and transmission electron microscopy we have analyzed a series of three bulk mineral samples. These three samples were designated as E-68-79, E-69-79 and E-70-79. Two of these samples were found to be extremely clean and free from asbestiform minerals by our analysis. The third, however, Sample E-70-79, contained extremely high levels of chrysotile asbestos, probably in the range of 0.10% to 1% of the sample.

The method of analysis was to take approximately 20 mg and disperse it in 10 cc of isopropyl alcohol and then ultrasonerate the mixture. The larger and heavier particles in general settle at the bottom and the extremely fine particles, such as the asbestos are concentrated in the suspension of the liquid.

The results of our analysis indicated that in counting 10 grid squares we found 96 fibers or approximately 9.6 fibers per grid square opening.

## Chrysotile 4/30/1979

## ASBESTOS ANALYSIS

### Quantitative

<u>Sample No.</u>	<u>Amount</u>
31379-500	$2.98 \times 10^8$ fibers/gram
31379-41	$1.15 \times 10^9$ fibers/gram
10578-500	0
101078-41	$9.45 \times 10^8$ fibers/gram

Millions of Chrysotile fibers found  
9/19/1979

### Qualitative

<u>Sample No.</u>	<u>Code No.</u>	<u>Sample No.</u>	<u>Code No.</u>	<u>Sample No.</u>	<u>Code No.</u>
6B	0	70T	CD	MD465-2	0
6T	0	72T	CE	MW6-1	0
6G	0	72B	CD	MW6-2	0
20T	0	72G	CE	4026-1	0
20G	BF	72S	0	4026-2	0
20B	BF	74T	CF	4026-3	0
36S1	BG	74B	0	4026-4	BF
36G	CG	74G	0	4026-5	BF
36B	CE	74S	0	4026-6	CD
36S2	BE	74PT	0	4026-7	CD
37G	CG	74PG	0	4026-8	0
37T	CD	74PS	BE	4026-9	CF
48G	CG	68G	CD	4026-10	CD
60T	0	68S	BF	4026-11	0
60B	CF	68B	0	4026-12	0
60G	CE	MC-1	0	4026-13	0
60S	BE	MC-2	0	4026-14	CE
64S1	CE	MC-3	0	4026-15	0
64G	CD	MCX-1	0	4026-16	BF
64S2	0	MCX-2	CD	4026-17	0
64T	0	MCX-3	0	4026-18	0
70B	CE	MCX-4	0	4026-19	0
70G	0	MD461-1	0		

- A. Many fibers greater than five microns.  
 B. Few fibers greater than five microns.  
 C. No fibers greater than five microns.
- D. Trace amounts (0 to 5 fibers per 15 grid openings)  
 E. Minor amounts (5 to 15 fibers per 15 grid openings)  
 F. Many fibers (15 to 50 fibers per 15 grid openings)  
 G. Abundant (greater than 50 fibers per 15 grid openings)



# Levels of Asbestos Varied from Trace to Abundant

The Emtal grades chosen for comparison were those that had been assayed earlier by Engelhard Industries. The sample code used for these products and the asbestos fibers found by E.I. is as follows:

PCM-4	Emtal 42, abundant fibers
PCM-12	Emtal 42, many fibers
PCM-7	Emtal 500, many fibers

TABLE II

## ANALYSIS OF 19 BULK SAMPLES FOR ASBESTOS FIBERS

BY TEM-SAED

Sample Code	Sample I.D.	Sample No.	Asbestos Total	Fiber/15 Grid Opening >5 microns
PCM-4 <sup>(1)</sup>	Emtal 42	4026-6	Trace, 0-5	None
PCM-4 <sup>(2)</sup>	Emtal 42	4026-14	Minor, 5-15	None
PCM-12 <sup>(1)</sup>	Emtal 42	4026-4	Many, 15-50	Few
PCM-12 <sup>(2)</sup>	Emtal 42	4026-12	Many, 15-50	Few
PCM-7 <sup>(1)</sup>	Emtal 500	4026-5	Many, 15-50	Few
PCM-7 <sup>(2)</sup>	Emtal 500	4026-9	Many, 15-50	0

07/17/1979

Ex. 4(f)



# Levels of Asbestos Varied from Trace to Abundant Verified by Repeat Sampling

TABLE V

## COMPARISON OF REPETITIVE SAMPLES OF EMTAL PRODUCTS

Sample Code	Sample I.D.	Date Analyzed	Laboratory Used	Asbestos Fiber/15 Grid Open. Total	>5μ
PCM-4 (1)	Emtal 42	7/12/79	Ga. Tech.	trace, 0-5	none
-4 (2)	Emtal 42	7/12/79	Ga. Tech.	minor, 5-15	none
-4	Emtal 42	4/20/79	E.I. Inst.	abundant >50	abundant >50
PCM-12 (1)	Emtal 42	7/12/79	Ga. Tech.	many, 15-50	few
-12 (2)	Emtal 42	7/12/79	Ga. Tech.	many, 15-50	few
-12	Emtal 42	4/20/79	E.I. Inst.	many, 15-50	few
PCM-7 (1)	Emtal 500	7/12/79	Ga. Tech.	many	few
-7 (2)	Emtal 500	7/12/79	Ga. Tech.	many	0
-7	Emtal 500	4/20/79	E.I. Inst.	many	0

**“There is good agreement between Georgia Tech and Engelhard that the asbestos fiber count in EMTAL varied from trace to abundant”**

**07/17/1979**

## Three Independent Laboratories Confirm Asbestos in Emtal

INTER-DEPARTMENT MEMORANDUM		Property of MSG Division		MINERALS & CHEMICALS DIVISION	
TO :	G.A. Nemstock ✓	FROM :	E.J. Triglia	DATE :	May 22, 1979
SUBJECT :	Talc Investigation				

In response to a TSR from Marketing, a sample of Emtal 42 representing a composite of shipments made from 9/78 to 11/78 was examined for the presence of fibers. This was done as part of a program to obtain comparison data between Baker and Emtal 42 talcs. The samples were sent to Georgia Technical Institute where morphological identification was made by means of a transmission electron microscope using a magnification power of about 25,000/1 which can thus distinguish particles as small as .01 micron in diameter. Evidence of serpentine fibers were found. These fibers have a very distinctive and unique shape which makes them easy to identify. I have micrographs that were taken at the Institute which show the fibrous nature and hollow tube or scroll like structural characterization of this material. To positively confirm the presence, however, selected area electron diffraction analyses are necessary. This is an instrumental device that allows the microscopist to focus on any single submicron particle in the field of the electron microscope. An electron diffraction pattern is obtained corresponding to the regular arrangement of atoms and ions in space which is characteristic of the crystalline material under observation. I have here a photograph of a pattern showing the streaks and "d" spacing and arrangements of the dots which constitute "fingerprints" that belong exclusively to chrysotile and next to it is the pattern for talc for comparison.

With the realization that we have found fibers in one of our Emtal samples, several more samples of Emtal 42 were submitted to Georgia Tech for assay, one from recent and the other from earlier 1977 production. Each sample showed traces of fibers that were mostly smaller than 5 microns in length. These same samples were subsequently sent to two other independent laboratories for confirmation. Their results were in general agreement with those reported by Georgia Institute of Technology.

Competitive grades of talc from Vertal, Windsor and Baker were also tested and most showed evidence of some chrysotile with the exception of Vertal, which had none in the 95 grade and only a few fibers in the XXX grade.

Although it is difficult to quantify concentrations of fibrous material in bulk samples it is possible to calculate very roughly the fiber mass by measuring the length and breadth of every fiber counted. By assuming that the breadth measurement is a diameter, the volume of the fiber can be calculated. The volume multiplied by the density will give us the mass concentration of the fibrous particles. Knowing the weight of sample that was transferred to the grid allows us to calculate an approximate weight percent of fibers present.

ha  
2800

continued....

COPY TO : JVK

SIGNED: *Emil Triglia*

EM-11504 PADUANO BASF02559

Three separate laboratories plus Engelhard find chrysotile asbestos in EMTAL 42 from 1977, 1978 and 1979.

“The results showed that although there was a variability in the number of fibers counted from week to week, there were nevertheless **fibers present in every sample** of Emtal 42 tested. A few of the Emtal 42 samples showed relatively high fiber counts.”

05/22/1979

# In 1979 Engelhard Conducted its Own Study of the Emtal Mine

CONFIDENTIAL

INTER-DEPARTMENT MEMORANDUM

TO: E.J. Triglia FROM: P.N. Gale DATE: April 11, 1979

SUBJECT: Talc Investigation - Review and Update

CONFIDENTIAL

The following is a review and update on the talc investigation which initiated in February 1979. The investigation itself concerns the identification of contaminants in a number of talc production samples using transmission electron microscopy.

Transmission electron microscopy investigations were undertaken at the Georgia Institute of Technology from February 12th to February 16th. One of the samples (79-J-1) investigated during this time was a talc production sample from the Baker mine in southern Quebec. A request had been made (11/79) to examine this sample and determine the mineralogy and possible contaminants. A transmission electron microscope examination of this sample showed the presence of chrysotile fibers. The implication of this information prompted Mr. Howard Shafer to send for talc production samples to the Georgia Institute of Technology for electron microscopy investigations. Two of the samples (79-J-2, 79-J-4) were talc production samples from the Quebec operation.

Results from this investigation were presented on February 20th at a meeting attended by EJT, EAJ, MJZ, and CCC. These same results were presented on February 22nd at a meeting attended by EJT, EAJ, GMS, ALY, and JMS. At that time it was decided that the investigation was to continue by eight talc production samples for the presence of contaminants with the transmission electron microscope. The following samples were selected from February 27th to March 2nd:

79-J-2 (Eatal 42)  
79-J-3 (Baker, Quebec)  
79-J-4 (Eatal 42)  
79-J-5 (Baker, Quebec)  
Windsor 36  
Ventral 95  
Ventral XXX  
B-191-773 (Eatal 42)

The quantitative data generated from the transmission electron microscope on the eight samples listed above are presented in Table I.

continued..

hs

0072

COPY TO: GAR JVK ALY JMS EJT

REVIEWED: P.N. Gale

VOLK

BASF\_SAMP

Some of the data in Table I was presented on March 8th at a meeting attended by EJT, EAJ, GMS, ALY, MJZ, JMS, and BDM. Based on the data reported, the following decisions were made in reference to the future course of action to be taken in the talc investigation:

1. Calculate the percent by weight of fiber in each sample.
2. Check the transmission electron microscopy data obtained at the Georgia Institute of Technology with transmission electron microscopy work on the same samples at the McCrone research institute.
3. Examine the Johnson mine and mill for the possible source of contaminants.
4. Conduct air sampling tests at the Johnson operation.
5. Attempt to develop a qualitative method for testing the amount of contaminants in production sample from Johnson.

Recently I have been adapting the NIOSH fiber counting method (phase contrast microscope) for airborne asbestos concentrations to bulk samples. The data generated will show the number of fibers >5µ with a 3 to 1 aspect ratio per sample. Furthermore, I will be checking each suspected "fiber" in polarized light in an attempt to identify the fiber itself. Fiber counting with the phase contrast microscope has been completed on bulk samples 79-J-2, 79-J-4 and Ventral XXX. The results and estimated values for airborne dust meeting TLV talc requirements are as follows:

Sample Number	Fibers/ng >5µ	Fibers/n <sup>3</sup>		Fibers/cc	
		Present Talc TLV 3 6.7ng/n <sup>3</sup>	Proposed Talc TLV 1.5ng/n <sup>3</sup>	Present	Proposed
79-J-2	559	3750	840	.004	.0008
79-J-4	754	5050	1130	.005	.001
Ventral XXX	1320	8800	2000	.009	.002

Presently seven talc production samples are being investigated quantitatively with the transmission electron microscope. Four samples (11379-500, 11379-41, 10378-500, 101078-41) are at the Georgia Institute of Technology and three samples (B-68-79, B-49-79, B-10-79) are at the McCrone research institute. Thirty-eight crushed rock samples have been sent to the Georgia Institute of Technology for qualitative transmission electron microscopy investigations. Fifty-two respirable samples collected at the Johnson mine and mill were sent to George B. Gifford Environmental Consultants for fiber count by phase contrast microscopy. Eight other respirable samples collected from the mine and mill were sent to Walter McCrone Associates for identification of fibers by transmission electron microscopy.

VOLK

BASF 00105

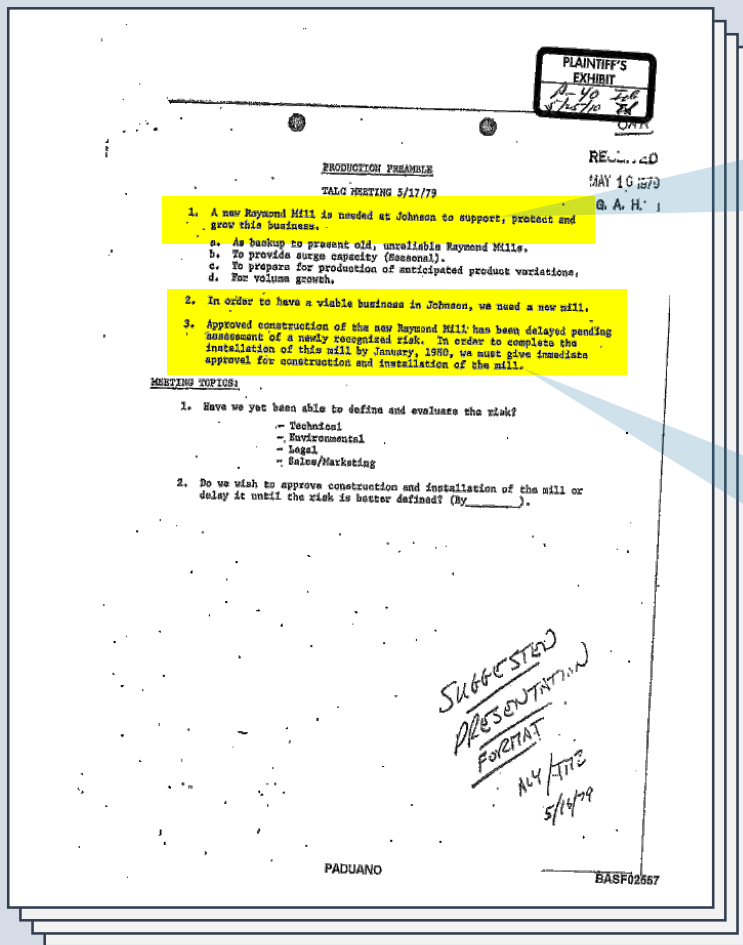
BASF\_SAMPSON00013155

The following is a review and update on the talc investigation which was initiated in February 1979. The investigation itself concerns the identification of contaminants in a number of talc production samples using transmission electron microscopy.

\*\*\*

Thirty-eight mine crushed rock samples have been sent to the Georgia Institute of Technology for qualitative transmission electron microscopy investigations.

# What was the purpose of the asbestos in mine study?



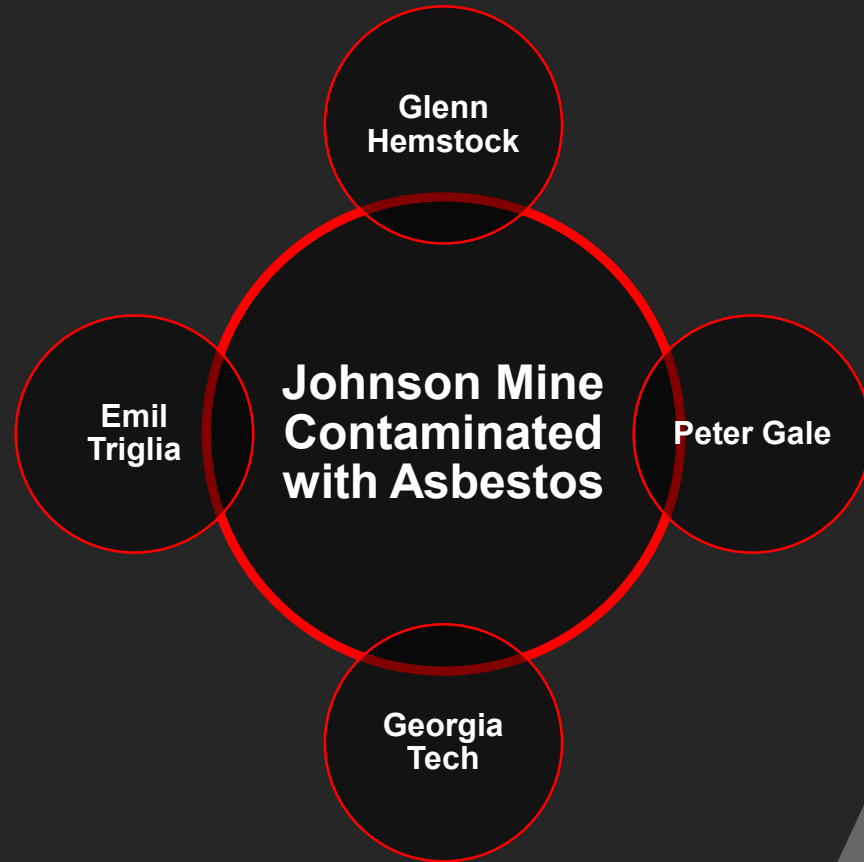
**“A new Raymond Mill is needed at Johnson to support and grow this business.”**

**“Approved construction of the new Raymond Mill has been delayed pending the assessment of a newly recognized risk.”**

**05/17/1979**



# Engelhard & Georgia Tech Agree Johnson Mine Contaminated With Asbestos



PRODUCTION PREAMBLE

TALC MEETING 5/17/79

RECEIVED

MAY 16 1979

G. A. H. J.

1. A new Raymond Mill is needed at Johnson to support, protect and grow this business.
  - a. As backup to present old, unreliable Raymond Mills.
  - b. To provide surge capacity (Seasonal).
  - c. To prepare for production of anticipated product variations.
  - d. For volume growth.
2. In order to have a viable business in Johnson, we need a new mill.
3. Approved construction of the new Raymond Mill has been delayed pending assessment of a newly recognized risk. In order to complete the installation of this mill by January, 1980, we must give immediate approval for construction and installation of the mill.

MEETING TOPICS:

1. Have we yet been able to define and evaluate the risk?
  - Technical
  - Environmental
  - Legal
  - Sales/Marketing
2. Do we wish to approve construction and installation of the mill or delay it until the risk is better defined? (By \_\_\_\_\_).

SUGGESTED  
PRESENTATION  
FORMAT  
ALY/ATZ  
5/16/79

PADUANO

BASF02667

BASF\_LOPEZ000012490

## TALC MEETING 5/17/79

MEETING TOPICS:

1. Have we yet been able to define and evaluate the risk?
  - Technical
  - Environmental
  - Legal
  - Sales/Marketing

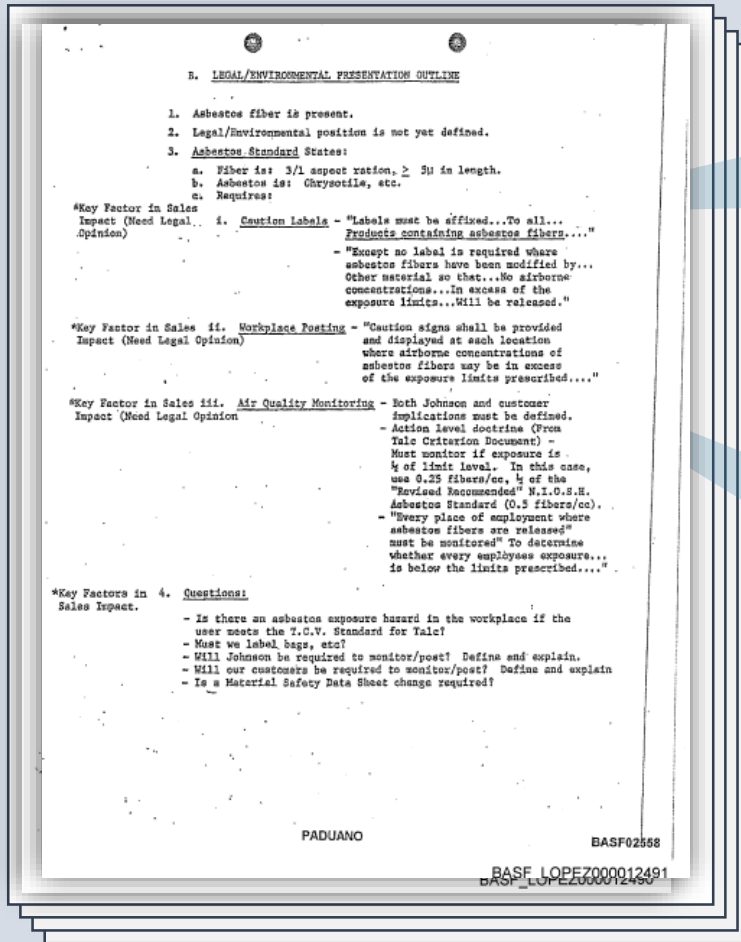
05/17/1979

# "Asbestos Fiber is Present"

TALC MEETING 5/17/79

1. Asbestos fiber is present.
2. Legal/Environmental position is not yet defined.
3. Asbestos Standard States:
  - a. Fiber is: 3/1 aspect ration,  $\geq$  5 $\mu$  in length.
  - b. Asbestos is: Chrysotile, etc.
  - c. Requires:

05/17/1979



# Why was the Johnson Mine closed?

46

15 Q If I understood your testimony from  
16 earlier today, you told us that -- which employer  
was

17 it that owned the talc mine in Vermont?

18 A It was Engelhard Minerals & Chemicals.

19 Q Engelhard Minerals & Chemicals.

20 At some point they did tell you that you  
21 would not be working with talc anymore, correct?

22 A That's right, yes.

23 Q And that was because of a possible  
24 asbestos contamination?

25 A Yes.

47

1 Q What information at that time did they  
2 give you with regards to asbestos?

3 A Well, that was after the Selikoff study  
4 had made the headlines, so they just said that  
5 asbestos in trace amounts was found in talc, and I  
6 think they said that there's no talc in the world  
7 that doesn't have a trace of asbestos with it.

8 So that's about all they said, but they  
9 closed their mine -- the mine down, they sealed it  
10 off, and told us to purge our records.

116

1 Q Okay. And do you recall who sent that  
2 memo?

3 A I believe it was the president of the  
4 company.

5 Q Do you know who the president of the  
6 company was at that time?

7 A Irving Isko. I-S-K-O.

8 Q And do you recall the contents of that  
9 memo, what it had said?

10 **A Simply we're closing the  
mine because --**

11 **I think I recall it said "For the  
fear of**

12 **contamination of asbestos,  
we're closing that mine.**

13 **We'll seal it up immediately."**



# Engelhard Considered the Entire Asbestos Findings Reliable

Positive +	Negative -	Problem NOT Reliable
p-003 - 8/18/72	p-001 - 7-8-71	p-010 - 10/12/73
p-88 - 6/12/73	p-002 - 8/1/72	p-129 - 3/15/77
p-92 - 5/25/73	p-188 - 4/25/79	p-110 - 3/25/77
p-006 - 9/5/72		p-135 - 5/2/77
p-120 - 2/23/77		p-136 - 5/18/77
p-138 - 4/27/77		p-141 - 7/1/77
p-170 - 10/27/78		p-18 - 8/18/77
p-194 - 1/29/79		p-198 - 3/26/79
p-197 - 3/23/79		p-40 - 8/13/79
p-201 - 4/11/79		p-234 - 10/28/80
p-203 - 4/30/79		p-235 - 10/30/80
p-206 - 5/17/79		p-411 - 6/24/82
p-207 - 5/22/79		p-251 - 7/29/82
p-214 - 7/17/79		
p-217 - 7/26/79		
p-249 - 3/11/82		
p-219 - 9/18/79		

EXHIBIT  
p-422



6/27/12 Hemstock Dep. 667:11-668:13

# Was Dr. Hemstock Pressured Into Categorizing The Emtal Testing Documents?

Case 2:11-cv-01754-BRM-AM Document 52-1 Filed 05/17/16 Page 46 of 130 Page ID  
31058

Positive +	Negative -	Problem NOT Reliable
p-003 - 8/18/72	p-001 - 7-8-71	p-010 - 10/12/73
p-88 - 6/12/73	p-002 - 8/1/72	p-129 - 3/15/77
p-92 - 5/25/73	p-188 - 4/25/79	p-110 - 3/25/77
p-000 - 9/5/72		p-135 - 5/2/77
p-120 - 2/23/77		p-130 - 5/18/77
p-138 - 4/27/77		p-141 - 7/1/77
p-170 - 10/27/78		p-18 - 8/18/77
p-194 - 1/29/79		p-198 - 3/26/79
p-197 - 3/23/79		p-40 - 8/13/79
p-201 - 4/11/79		p-234 - 10/28/80
p-203 - 4/30/79		p-235 - 10/30/80
p-206 - 5/17/79		p-411 - 6/24/82
p-207 - 5/22/79		p-251 - 7/29/82
p-214 - 7/17/79		
p-217 - 7/26/79		
p-249 - 3/11/82		
p-219 - 9/18/79		

EXHIBIT  
p-422



6/27/12 Hemstock Dep. 602:12-603:9, 658:1-659:8



**“Trace” amounts of asbestos is  
in the order of a couple of  
percent by weight more or less**

# What Do Engelhard, BASF, & Cabill Say Is The "Safe" Amount Of Exposure To Asbestos?

Case 2:11-cv-01754-ERF-AME Document 521-29 Filed 05/17/18 Page 50 of 130 PageID  
31060



**Dr. Hemstock, in looking at the sales of Emtal over a three-year period to just one customer, Congoleum of Trenton, N.J., there were 1,800,000 pounds of asbestos fiber introduced into the workplace even if there were only "trace" amounts of asbestos contained in Emtal talc.**

**600,000 lbs of  
asbestiform material in 1 year**

6/27/12 Hemstock Dep. 677:16–679:14, 679:15-22, 681:19–683:20



# Personal Injury Litigation Begins

Engelhard Joined in *Westfall* Mesothelioma Case

10/21

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DAVID HOWARD WESTFALL, IN HIS  
CAPACITY AS ADMINISTRATOR OF THE  
ESTATE OF THOMAS HOWARD WESTFALL  
AND IN HIS CAPACITY AS ADMINISTRATOR  
OF THE ESTATE OF BETTY E. WESTFALL,  
Plaintiff

v.

WHITTAKER, CLARK & DANIELS, *Carli*  
METROPOLITAN TALC COMPANY, INC., - *Carli*  
PFIZER, INC. *Windsor Minerals - Vetter*  
INC., itself and as successor to  
EASTERN MAGNESIA TALC COMPANY, INC.,  
and OMYA, INC., itself and as  
successor to VERMONT TALC COMPANY, INC.,  
Defendants

MINERALS & CHEMICALS PHILIPP CORPORATION  
Third-Party Defendant *SR*

*10/21*  
*10/21*  
*10/21*

C.A. No. 79-0269/R

*Westfall - Carli*  
*Met - Carli*  
*Pfizer - Carli*  
*Windsor - Vetter*  
*Omya - DeCar*

THIRD PARTY COMPLAINT OF WINDSOR  
MINERALS INC.

COUNT I

1. The defendant and third-party complainant, Windsor Minerals Inc. ("Windsor") is a corporation duly organized and existing under the laws of the State of Vermont, with a principal place of business at Windsor, Vermont.

2. The third-party defendant Minerals & Chemicals Philipp Corporation ("Philipp") is a corporation duly organized and existing under the laws of the State of Maryland with a principal place of business at Menlo Park, New Jersey.

Oct. 21, 1982

BASF\_SAMPSON000038167



**CT CORPORATION SYSTEM**  
 The Corporation Trust Company

**SERVICE OF PROCESS TRANSMITTAL FORM**

**OFFICE COPY**

Trenton, New Jersey  
 (City) (State)  
 JUNE 27, 1983  
 (Date)  
 ( ) Via Certified First Class Mail  
 ( ) Via Messenger  
 Doctor 2/6/83  
 Diary 2/6/83  
 Change 2/6/83

TO: Arthur A. Dornbusch, II, V.P. & Gen. Csl.  
 Engelhard Corporation  
 Menlo Park, CA 40  
 Edison, N.J. 08818

RECEIVED  
 RE: PROCESS SERVED IN NEW JERSEY  
 (Jurisdiction)

FOR EASTERN MAGNESIA TALC COMPANY  
 (Name of Company) DELAWARE  
 (Domestic State)

Enclosed are copies of legal process served upon the statutory agent of the above company as follows:

1. Title of Action: JACQUELINE M. SCHWARTZ, Plaintiff  
 vs UNION CARBIDE CORPORATION, John Doe, Defendants
2. Document(s) ☐ Summons, Complaint - Second Amended, Letter from attys dated 6/21/83
3. Court: ☐ Superior Court of New Jersey  
☒ SUPERIOR COURT OF CALIFORNIA, LOS ANGELES, COUNTY Docket # C 327 521
4. Nature of Action: Plaintiffs prays judgment for general, medical, punitive damages, costs etc. Alleges pltf sustained injuries due to exposure to talc containing products distributed by defts. Breach of Warranties.
5. ☐ Process Served on: THE CORPORATION TRUST COMPANY in New Jersey.  
☒ Process Received By: THE CORPORATION TRUST COMPANY in New Jersey by mail.  
 From: pltf's atty 6/21/83 enclosed.  
 Envelope Post Marked June 27, 1983
6. Date and Hour of Service or Receipt: June 27, 1983
7. Appearance or Answer Due: ☐ Within 20 days of service, exclusive of day of service.  
☒ within 30 days
8. Plaintiff's Attorney(s): Greene, O'Reilly, Agnew & Broillet  
 1122 Wilshire Blvd.  
 Los Angeles, Ca. 90017
9. Remarks:  
☐ This confirms our telephone call to your office.  
☐ Above telephoned to CT office and is sent to you per their instructions.  
 Service was made by mail under Section 415.30 of the California Code of Civil Procedure.  
 IMPORTANT: Please note the enclosed Memorandum regarding California Service of Process by Mail, and the enclosed unsigned copies of acknowledgement of receipt of summons.  
 According to atty service is to be made upon Eastern Magnesia Talc Company as described as one of the John Does. Envelope addressed to Above company also.  
 KINDLY ACKNOWLEDGE RECEIPT BY SIGNING THE CARBON COPY AND RETURNING IT TO → Signed: C I CORPORATION SYSTEM  
 Per: CLAIRE PICKUP (gb)

BASF\_SAMPSON000035806

June 27, 1983

Engelhard is sued in the  
 Schwartz case in California

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF RHODE ISLAND  
3 DAVID HOWARD WESTFALL, IN HIS  
4 CAPACITY AS ADMINISTRATOR OF  
5 THE ESTATE OF THOMAS HOWARD  
6 WESTFALL AND IN HIS CAPACITY AS  
7 ADMINISTRATOR OF THE ESTATE OF  
8 BETTY E. WESTFALL,  
9 Plaintiff  
10  
11 vs. C.A. No. 79-0269  
12 WHITTAKER, CLARK & DANIELS,  
13 METROPOITAN TALC COMPANY, INC.,  
14 and OMYA, INC., itself and as  
15 successor to VERMONT TALC  
16 COMPANY, INC.,  
17 Defendants  
18 WINDSOR MINERALS, INC., itself  
19 and as successor to EASTERN  
20 MAGNESIA TALC COMPANY, INC.,  
21 Defendant and  
22 Third-Party Plaintiff  
23  
24 vs.  
25 MINERALS & CHEMICALS PHILLIP  
CORPORATION,  
Third-Party Defendant

DEPOSITION  
EXHIBIT  
P 68  
SC 11-6-09

Continued deposition of GLENN HEMSTOCK,  
taken on behalf of the Plaintiff, pursuant to the Federal  
Rules of Civil Procedure, on March 16, 1983, at the offices  
of Decof & Grimm, One Smith Hill, Providence, Rhode Island,  
convening at 10:00 a.m., before Jeanne M. St. Hilaire-Derham  
Notary Public.

REPORTING ASSOCIATES  
Shorthand Reporters  
205 Howard Building  
Providence, RI 02903  
RECEIVED  
MAR 25 1983  
ADLER, PULLUCK & SHEEHAN

March 16, 1983

Doctor Hemstock testifies  
about tests showing trace  
to abundant asbestos  
fibers in Emtal talc.

See, e.g., 3/16/83 Hemstock Dep. 17:16-24, 46:11-17  
(finding 1.6% asbestos, which Hemstock testified is greater than trace), 103:8-  
19 (relatively higher fiber counts)



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF RHODE ISLAND  
3 DAVID HOWARD WESTFALL, IN HIS  
4 CAPACITY AS ADMINISTRATOR OF  
5 THE ESTATE OF THOMAS HOWARD  
6 WESTFALL AND IN HIS CAPACITY AS  
7 ADMINISTRATOR OF THE ESTATE OF  
8 BETTY E. WESTFALL,  
9 Plaintiff  
10  
11 -v-  
12 WHITTAKER, CLARK & DANIELS,  
13 METROPOLITAN TALC COMPANY, INC.,  
14 and OMYA, INC., itself and as  
15 successor to VERMONT TALC  
16 COMPANY, INC.,  
17 Defendants  
18 WINDSOR MINERALS, INC., itself  
19 and as successor to EASTERN  
20 MAGNESIA TALC COMPANY, INC.,  
21 Defendant and  
22 Third-Party Plaintiff  
23  
24 -v-  
25 MINERALS & CHEMICALS PHILLIP  
CORPORATION,  
Third-Party Defendant

CIVIL ACTION  
No. 79-1066 George

OFFICE COPY  
By Hand  
By Mail  
Filed  
Received  
Docket  
Drawn

Dupe

TRANSCRIPT of the stenographic notes  
of the proceedings in the above-entitled matter, as taken  
by Theresa M. Giaino, a Certified Shorthand Reporter and  
Notary Public of the State of New Jersey, at the offices  
of Messrs. Baer and Arbeiter, 344 Main Street, Metuchen,  
New Jersey, on the 7th day of April, 1983, commencing at  
11:15 a.m.

WILLIAM C. O'BRIEN ASSOCIATES  
OFFICIALS - GENERAL - CERTIFIED SHORTHAND REPORTING  
NEWARK, N. J.

BASF\_SAMPSON000033339

April 7, 1983

Dr. Triglia testifies that  
asbestos found in Emtal  
talc

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF RHODE ISLAND  
3 DAVID HOWARD WESTFALL, IN HIS  
4 CAPACITY AS ADMINISTRATOR OF  
5 THE ESTATE OF THOMAS HOWARD  
6 WESTFALL AND IN HIS CAPACITY AS  
7 ADMINISTRATOR OF THE ESTATE OF  
8 BETTY E. WESTFALL,  
9 Plaintiff  
10  
11 vs. C.A. No. 79-0269  
12 WHITTAKER, CLARK & DANIELS,  
13 METROPOLITAN TALC COMPANY, INC.,  
14 and OMYA, INC., itself and as  
15 successor to VERMONT TALC  
16 COMPANY, INC.,  
17 Defendants  
18 WINDSOR MINERALS, INC., itself  
19 and as successor to EASTERN  
20 MAGNESIA TALC COMPANY, INC.,  
21 Defendant and  
22 Third-Party Plaintiff  
23  
24 vs.  
25 MINERALS & CHEMICALS PHILLIP  
CORPORATION,  
Third-Party Defendant

DEPOSITION  
EXHIBIT  
P 68  
SD 11-6-09

Continued deposition of GLENN HEMSTOCK,  
taken on behalf of the Plaintiff, pursuant to the Federal  
Rules of Civil Procedure, on March 16, 1983, at the offices  
of Decof & Grimm, One Smith Hill, Providence, Rhode Island,  
convening at 10:00 a.m., before Jeanne M. St. Hilaire-Derham  
Notary Public.

REPORTING ASSOCIATES  
Shorthand Reporters  
205 Howard Building  
Providence, RI 02903  
RECEIVED  
MAR 25 1983  
ADLER, PULLUCK & SHEEHAN

April 26, 1983

Gale testifies that  
chrysotile asbestos found  
in Johnson Mine

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF RHODE ISLAND

3 DAVID EDWARD WESTFALL, IN HIS } RECEIVED  
4 CAPACITY AS ADMINISTRATOR OF } JUN 9 1983  
5 THE ESTATE OF THOMAS EDWARD }  
6 WESTFALL AND IN HIS CAPACITY } E.P.L.  
7 AS ADMINISTRATOR OF THE ESTATE }  
8 OF BETTY E. WESTFALL, }  
9 vs. } C.A. No. 79-0205  
10 WITTACER, CLARK & DANIELS, }  
11 METROPOLITAN TALC COMPANY, }  
12 INC., PFIZER, INC., NIDRBER }  
13 MINERALS, INC., itself and }  
14 as successor to EASTERN MAG- }  
15 NESIUM TALC COMPANY, INC., }  
16 and OMYA, INC., itself and }  
17 as successor to VERMONT TALC }  
18 COMPANY, INC. }

19  
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DEPOSITION OF PETER N. GALE, taken on behalf of the Plain-  
tiff, on April 26, 1983, in Oklahoma City, Oklahoma, before  
Freddy D. Leggett, Shorthand Reporter and Notary Public for the  
State of Oklahoma.

APPEARANCES

For the Plaintiff: R. Daniel Frenniss  
Attorney at Law  
One Smith Hill  
Providence, Rhode Island 02903

FREE LANCE REPORTERS  
ONE FOUR SEVENTY CENTER  
OKLAHOMA CITY, OKLAHOMA 73104  
(405) 241-0100

481,000,00000012

**“I recall that there were fibers found in the talc, yes . . . I determined those fibers were chrysotile fibers.”**

Westfall Settles After Engelhard Executives  
Admit Evidence of Asbestos in Emtal Talc

521-29  
Case 2:11-cv-01764-BRM-AMC Document 521-29 Filed 05/17/16 Page 58 of 130 PageID  
31068

Engelhard  
Talc  
off

4/29  
4/29  
Wittacker  
3/6/16

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

----- x

DAVID HOWARD WESTFALL, IN HIS :  
CAPACITY AS ADMINISTRATOR OF :  
THE ESTATE OF THOMAS HOWARD :  
WESTFALL AND IN HIS CAPACITY :  
AS ADMINISTRATOR OF THE ESTATE : C.A. No. 79-0269  
OF BETTY E. WESTFALL :

vs. : STIPULATION AND ORDER  
: OF CONFIDENTIALITY

WITTACKER, CLARK & DANIELS, :  
METROPOLITAN TALC COMPANY, INC., :  
PFIZER, INC., WINDSOR MINERALS, :  
INC., itself and as successor :  
to EASTERN MAGNESIUM TALC :  
COMPANY INC., and OMYA, INC., :  
itself and as successor to :  
VERMONT TALC COMPANY, INC. :

----- x

IT IS HEREBY STIPULATED AND AGREED BY and between the  
undersigned counsel as follows:

1. As used herein, the following words shall have  
the following meaning:

(a) "document" shall be construed in the broadest  
possible sense, and shall include without limitation the  
following items, whether written, printed, typed, photo-  
stated, photographed, recorded or reproduced by any other  
mechanical or manual process or means upon any tangible  
thing in any form of communication or representation,  
including letters, words, numbers, pictures, sounds or  
symbols, or combinations thereof, or any copies bearing

BASF FC 0007795  
BASF\_SAMPSON000025203

31  
32  
33  
34  
35

**Westfall case settles.**



All Incriminating Evidence  
Returned As Condition of  
*Westfall* Settlement

Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 60 of 130 PageID:  
3070

# Even the Plaintiff's Evidence Was Destroyed

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

KIMBERLEE WILLIAMS, individually, as personal representative of the Estate of Charles L. Williams, deceased on behalf of said estate, and as representative of others similarly situated; NANCY PEASE, individually, as personal representative of the Estate of William Clark, deceased on behalf of said estate, and as representative of others similarly situated; MARILYN L. HOLLEY, as personal representative of the Estate of Kathryn Darnell, deceased on behalf of said estate, and as representative of others similarly situated; DONNA WARE, individually as personal representative of the Estate of Ralph Ware, deceased on behalf of said estate, and as representative of others similarly situated; and DONNETTE WENGERD, individually, as personal representative of the Estate of Jennifer Graham, deceased on behalf of said estate, and as representative of others similarly situated, and ROSANNE CHERNICK, individually, as personal representative of the Estate of Steven Chernick, deceased on behalf of said estate, and as representative of others similarly situated,

Plaintiffs,

v.

BASF CATALYSTS LLC, CAHILL GORDON & REINDEL LLP, CAHILL GORDON & REINDEL, a partnership including a professional corporation, THOMAS D. HALKET, ARTHUR A. DORNBUSCH II, GLENN HEMSTOCK, HOWARD G. SLOANE (A/K/A "PETER SLOANE"), IRA J. DEMBROW, JOHN DOE BUSINESS ENTITIES 1 to 100, JOHN DOE BUSINESS ENTITIES 101 to 200, JOHN DOE LAWYERS 1 to 500, and, JOHN DOE 1 to 500,

Defendants.

**BASF CATALYSTS  
AND OBJECTIONS TO PL  
FOR AD**

Pursuant to Federal Rules of Civil Procedure, the undersigned hereby responds and objects to Plaintiffs' First Request for Admissibility of Evidence.

In addition to the General Objections set forth above, BASF objects to Request No. 98 on the grounds that it is vague, ambiguous, and overly broad. BASF further objects to Request No. 98 because it seeks information that is protected under the attorney-client privilege, the attorney work product doctrine, and/or any other privilege or protection from disclosure. BASF further objects to this request because it requests information about the knowledge of other parties from decades ago. BASF additionally objects to Request No. 98 because it requests information about the knowledge of Cahill, a collective entity.

REQUEST NO. 99:

Engelhard or its attorneys destroyed notes created by Dr. William Glassley in the *Westfall* case.

RESPONSE TO REQUEST NO. 99:

In addition to the General Objections set forth above, BASF objects to Request No. 99 on the grounds that it is vague, ambiguous, and overly broad. BASF further objects to Request No. 99 because it seeks information that is protected under the attorney-client privilege, the attorney work product doctrine, and/or any other privilege or protection from disclosure. BASF further objects to this request because it requests information about the knowledge of Engelhard, a collective entity. Subject to these objections, BASF admits that certain of Dr. Glassley's notes were turned over to counsel for Engelhard and destroyed pursuant to the Stipulation and Order of Confidentiality in place in the *Westfall* case, but that Dr. Glassley maintained other notes that he did not turn over.

REQUEST NO. 100:

At the time Dr. William Glassley's notes in the *Westfall* case were being destroyed or disposed of, Engelhard was aware that this would be and was taking place.

RESPONSE TO REQUEST NO. 100:

No. 97: "BASF admits that at least **certain of Dr. Glassley's talc samples were destroyed** pursuant to the Stipulation and Order of Confidentiality in place in the *Westfall* case."

No. 99: "BASF admits that certain of **Dr. Glassley's notes were turned over to counsel for Engelhard and destroyed** pursuant to the Stipulation and Order of Confidentiality in place in the *Westfall* case ...."

No. 102: "BASF admits that certain of **Dr. Glassley's photographs were turned over to counsel for Engelhard and destroyed** pursuant to the Stipulation and Order of Confidentiality in place in the *Westfall* case ...."



## Engelhard Legal Department Ordered Evidence Be Discarded

March 7, 1984

INTER-DEPARTMENT MEMORANDUM		Property of M&C Division		MINERALS & CHEMICALS DIVISION	
TO	All R&D Personnel	FROM	G. A. Hemstock	DATE	March 7, 1984
SUBJECT	DOCUMENT RETRIEVAL -- DISCONTINUED OPERATIONS				

It is the policy of Engelhard Corporation to avoid the undue accumulation of documents that are no longer likely to be needed in our business operations. The regular discarding of outdated business records keeps our storage costs down and enables Engelhard personnel to make more efficient use of those Company documents and files that are needed for current operations. As a first step in complying with this policy within the Research Department, please review your personal files and sort out all notebooks, duplicate copies of notebooks, technical service requests and responses, memoranda and reports that pertain to the following discontinued operations:

Engelhard Minerals Ltd.  
SCF (Societe Corneille Francais)  
Speedi Dri Corporation  
Emtal  
Chemstone's Ferrovandium Operation  
Cuyahoga Line Co.

All information contained in your files pertaining to these operations should be withdrawn and placed in file boxes for discard. Appropriate file boxes can be obtained from Chuck Mac'at at extension 5072. Please keep these boxes in your office area, available for pick up on March 16, 1984. In the event that the notebook you are currently using contains information from these discontinued operations, please place it on the top of the box. All these notebooks will be returned to you on or before March 19th. Please understand that it is our intent to retain copies of those documents to be preserved from discontinued operations only in our central files and can be accessed there should the need arise.

Your cooperation in this matter is much appreciated.

GAH:jf

DEPOSITION  
EXHIBIT  
P-62  
86-11-6-89

Distribution: L. Kolb	SIGNED: <i>J. A. Hemstock</i>
-----------------------	-------------------------------

Purge memo calls for **"discard"** of Emtal related documents for R&D operations. Scientists told to put research outside their doors for pickup. Lab notebooks to be picked up on March 16, and **retuned on March 19, after Emtal information removed.**

March 7, 1984

INTER-DEPARTMENT MEMORANDUM		Property of M&C Division		MINERALS & CHEMICALS DIVISION	
TO	All R&D Personnel	FROM	G. A. Hemstock	DATE	March 7, 1984
SUBJECT	DOCUMENT RETRIEVAL -- DISCONTINUED OPERATIONS				

It is the policy of Engelhard Corporation to avoid the undue accumulation of documents that are no longer likely to be needed in our business operations. The regular discarding of outdated business records keeps our storage costs down and enables Engelhard personnel to make more efficient use of those Company documents and files that are needed for current operations. As a first step in complying with this policy within the Research Department, please review your personal files and sort out all notebooks, duplicate copies of notebooks, technical service requests and responses, memoranda and reports that pertain to the following discontinued operations:

Engelhard Minerals Ltd.  
SCF (Societe Corneille Francais)  
Speedi Dri Corporation  
Emtal  
Chemstone's Ferrovandium Operation  
Cuyahoga Lime Co.

All information contained in your files pertaining to these operations should be withdrawn and placed in file boxes for discard. Appropriate file boxes can be obtained from Chuck Mac'at at extension 5072. Please keep these boxes in your office area, available for pick up on March 16, 1984. In the event that the notebook you are currently using contains information from these discontinued operations, please place it on the top of the box. All these notebooks will be returned to you on or before March 19th. Please understand that it is our intent to retain copies of those documents to be preserved from discontinued operations only in our central files and can be accessed there should the need arise.

Your cooperation in this matter is much appreciated.

GAH:jf

Depbington, L. Kolb

SIGNED *J. A. Hemstock*

DEPOSITION EXHIBIT  
P-62  
86-11-6-89

### Hemstock in his *Sampson* case deposition:

- Explained that the document purge was not limited to the R&D department, but included other departments, such as production, marketing, etc.
- That while the memo went out under his name, it was prepared by the Legal Department and was likely drafted by General Counsel Dornbusch.



1 DAVID T. PETERSON  
2 JOYCE A. PADLESCHAT  
3 McCUTCHEN, BLACK, VERLEGER & SHEA  
4 600 Wilshire Boulevard  
5 LOS Angeles, California 90017  
6 (213) 624-2400  
7  
8 Attorneys for Defendant  
9 EASTERN MAGNESIA TALC COMPANY  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

JACK L. SCHWARTZ, et al.,  
Plaintiffs,  
v.  
UNION CARBIDE CORPORATION,  
et al.,  
Defendants.

NO. C 465 912  
NOTICE OF MOTION AND  
MOTION THAT SETTLEMENT  
WITH PLAINTIFF BE DEEMED  
A GOOD FAITH SETTLEMENT  
AND FOR ORDER DISMISSING  
CROSS-COMPLAINTS  
Date: July 10, 1984  
Time: 10:30 a.m.  
Dept: 26

AND ALL RELATED CROSS-ACTIONS.

TO: ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:  
PLEASE TAKE NOTICE that on July 10, 1984 at 10:30 a.m.  
or as soon thereafter as the matter can be heard in Department 26 of  
the above-entitled Court, located at 111 North Hill Street, Los  
Angeles, California 90012, defendant and cross-defendant Eastern  
Magnesia Talc Company will move the Court for an Order deeming its  
settlement with plaintiffs to be one made in good faith and for  
a further Order that all Cross-Complaints filed against it be  
dismissed.

BASF\_SAMPSON000028739

July 10, 1984

**Schwartz case settles**

BASF\_SAMPSON000028739

# Fraudulent Misrepresentations to Litigants and Courts



# Cahill and J&J Worked to Secure an Affidavit that Engelhard Knew Was False

Case 2:13-cv-01754-BPM-AMS Document 521-29 Filed 05/17/23 Page 65 of 100 PageID: 31075

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

KIMBERLEE WILLIAMS, individually, as personal representative of the Estate of Charles L. Williams, deceased on behalf of said estate, and as representative of others similarly situated; NANCY PEASE, individually, as personal representative of the Estate of William Clark, deceased on behalf of said estate, and as representative of others similarly situated; MARILYN L. HOLLEY, as personal representative of the Estate of Kathryn Danell, deceased on behalf of said estate, and as representative of others similarly situated; DONNA WARE, individually as personal representative of the Estate of Ralph Ware, deceased on behalf of said estate, and as representative of others similarly situated; and DONNETTE WENGERD, individually, as personal representative of the Estate of Jennifer Graham, deceased on behalf of said estate, and as representative of others similarly situated, and ROSANNE CHERNICK, individually, as personal representative of the Estate of Steven Chernick, deceased on behalf of said estate, and as representative of others similarly situated,

Plaintiffs,

v.

BASF CATALYSTS LLC, CAHILL GORDON & RENDEL LLP, CAHILL GORDON & RENDEL, a partnership including a professional corporation, THOMAS D. HALKET, ARTHUR A. DORNBUSCH II, GLENN HEMSTOCK, HOWARD G. SLOANE (AKA "PETER SLOANE"), IRA J. DEMBROW, JOHN DOE BUSINESS ENTITIES 1 to 100, JOHN DOE BUSINESS ENTITIES 101 to 200, JOHN DOE LAWYERS 1 to 500; and, JOHN DOE 1 to 500,

Defendants.

## ANSWERS OF BASF CATALYSTS LLC TO INTERROGATORY NO. 11 THE PLAINTIFFS

Defendant BASF Catalysts LLC ("BASF"), through and Kirkland & Ellis LLP, answers the Interrogatories proposed by the Plaintiffs as follows:

### INTERROGATORY NO. 11:

Identify all persons and participants involved in the development, drafting, revising, dissemination, and execution of the May 8, 1989 affidavit of Mr. William H. Ashton (attached as Ex. 4 to Plaintiffs' Second Amended Class Action Complaint).

### RESPONSE TO INTERROGATORY NO. 11:

Subject to and without waiving its objections, BASF states that Cahill attorneys, including Peter Sloane and Ira Dembrow, drafted, revised, and worked with William Ashton to finalize and sign the May 8, 1989 affidavit of William H. Ashton. Attorneys for Johnson & Johnson also were involved. BASF further states that, in addition to various other materials that varied by case, Cahill attorneys disseminated Mr. Ashton's May 8, 1989 affidavit at various points in time while Cahill served as national counsel in Emtal-related personal-injury litigation from 1989 until the 2000s. In addition to various other materials that varied by case, local counsel acting at Cahill's direction also disseminated Mr. Ashton's affidavit at various points in time from 1989 until the 2000s.

BASF objects that Interrogatory No. 11 is vague, ambiguous, overly broad, unduly burdensome, seeks irrelevant information, and that the burden or expense of the proposed discovery outweigh its likely benefit, as it asks BASF to identify "all persons and participants" who were "involved in" any aspect of preparing, signing, or disseminating an affidavit that was prepared multiple decades ago. BASF further objects that Interrogatory No. 11 calls for information in the possession of other parties.

**"Cahill attorneys, including Peter Sloane and Ira Dembrow, drafted, revised, and worked with William Ashton to finalize and sign the May 8, 1989 affidavit of William H. Ashton. Attorneys for Johnson & Johnson also were involved..."**

**Ashton Affidavit**

BASF Interrogs. Ex. 6

AFFIDAVIT

STATE OF NEW JERSEY )  
COUNTY OF SOMERSET ) ss.:

WILLIAM H. ASHTON, being duly sworn,  
says:

1. For thirty-five years, I have been engaged in investigating and studying the domestic talc industry and talc technology while employed by Johnson. In the course of this work, I have traveled throughout the United States and throughout the world from the University of Pennsylvania in 1954 to a Science degree. My major field of study was talc. My minor fields of study were geology and mineralogy. I worked at Louisiana State University training in talc minerals at the Battell Columbus, Ohio, which included consultation with the Department of Ohio State University. I have been a member of the American Society of Mineralogists and the International Standard

-2-

\* 2. From the 1940s through the 1980s, talc mined in Vermont and specifically, the talc mined by Engelhard Corporation (and its predecessors) from the talc mine located in Johnson, Vermont, has been considered to be

talc free from contamination by asbestos. This conclusion is the result of numerous investigations, examinations and studies of the Johnson mine. The following paragraphs discuss, in chronological order, these studies and investigations.

3. In 1949, Warren L. Hogue, Jr. and Frederick S. Mallette published a scientific paper entitled "A Study of Workers Exposed to Talc and Other Dusting Compounds in the Rubber Industry" (a copy of which is annexed hereto as Exhibit A). The authors studied workers in two rubber plants who had been exposed to talc and other dusting compounds for periods as long as 36 years. The authors noted that "[t]he dusting compound used in the tube operations and in rerolling liners is a pure talc from a deposit near Johnson, Vermont, and contains no free silica, tremolite, chrysotile, chrysotile, or actinolite." (Exhibit A at 360) The authors identified the talc discussed in their study as being produced by Eastern Magnesia Talc Company (Exhibit A at 363-64), a predecessor of the Engelhard

ADUANO

Ashton Affidavit

**"From the 1940s through the 1980s, talc mined in Vermont and specifically the talc mined by Engelhard Corporation (and its predecessors) from the talc mine located in Johnson Vermont the "Johnson Mine") has been considered to be talc free from contamination by asbestos"**



# Engelhard Cites to Its *Westfall* Expert Testimony But Omits Testimony of Its Own Scientists

Case 2:11-cv-01754-ARM Document 52-25 Filed 05/17/18 Page 67 of 130 PageID:  
31077

## AFFIDAVIT

STATE OF NEW JERSEY)  
COUNTY OF SOMERSET ) ss.:  
)

WILLIAM H. ASHTON, being duly sworn,  
says:

1. For thirty-five years, in investigating and studying the domestic talc industry and talc technology while working at Johnson. In the course of this work, in the United States and throughout the world, from the University of Pennsylvania in 1954 to 1984, but have remained an active member of the mineral committees of the American Society of Mineralogists and the International Standards Association.

## UNITED STATES DISTRICT COURT DISTRICT OF RHODE ISLAND

DAVID HOWARD WESTFALL IN HIS  
CAPACITY AS ADMINISTRATOR OF THE  
ESTATE OF THOMAS HOWARD WESTFALL  
AND HIS CAPACITY AS ADMINISTRATOR  
OF THE ESTATE OF BETTY E. WESTFALL,  
Plaintiff,

v.

WHITTAKER, CLARK & DANIELS,  
METROPOLITAN TALC COMPANY, INC.,  
PFIZER, INC., WINDSOR MINERALS, INC.,  
ITSELF AND AS SUCCESSOR TO EASTERN  
MAGNESIA TALC COMPANY, INC., AND  
OMYA, INC., ITSELF AND AS SUCCESSOR  
TO VERMONT TALC COMPANY, INC.,  
Defendants.

Civil Action  
No. 79-0

VIDEOTAPE DEPOSITION of ALFRED H. CHIDESTER, a witness  
called on behalf of the Defendants, taken pursuant to the  
Federal Rules of Civil Procedure, before Doris M. Jones,  
Registered Professional Reporter and Notary Public in and for the State of Rhode Island.

“8. In sworn testimony in 1983 [in the *Westfall* case] (relevant portions of which are attached as Exhibit G), Dr. Chidester stated that he never found veins of chrysotile asbestos in talc located in Vermont.”

**No mention of Hemstock, Triglia or Gale Depositions  
and Emtal/Johnson Mine Testing Results**

# Engelhard Executive Charles Carter Signed an Affidavit Engelhard Knew Was False

Case 2:11-cv-01754-ERM-MME Document 5-1 Filed 05/17/18 Page 48 of 130 PageID:  
31078

## AFFIDAVIT

STATE OF NEW JERSEY    )  
                                  ) ss.:  
COUNTY OF MIDDLESEX    )

Charles D. Carter, being duly sworn, deposes and says:

1. I am the Director of Joint Ventures and Resources of Engelhard Corporation ("Engelhard"), a Delaware corporation with its principal place of business in Menlo Park, New Jersey.

2. In 1967 a talc mine and mill in Johnson, Vermont was acquired, owned and operated by a newly incorporated, wholly-owned Engelhard subsidiary, Eastern Magnesia Talc Company, which had its principal place of business in Johnson, Vermont. Other than this one talc mine in Johnson, Vermont, neither Engelhard nor any of its subsidiaries or predecessor corporations ever owned or operated any talc mines.

3. As previously indicated in the Affidavit of Charles D. Carter, sworn and subscribed to on June 19, 1989, Engelhard does not currently possess any samples of the talc produced by this mine. In addition, Engelhard does not currently possess any testing data other than the data provided to you by way of the Ashton Affidavit and the report of Dr. Pooley.

BAGFFC 0014631

**“In addition, Engelhard does not currently possess any testing data other than the data provided to you by way of the Ashton Affidavit and the report of Dr. Pooley.”**

**Carter Affidavit  
8/18/1989**

Ex. 20(c)

Case 2:11-cv-01754-SRM-AMF Document 521-28 Filed 05/17/18 Page 63 of 130 PageID: 31079

# False Ashton and Carter Affidavits Used Repeatedly to Secure Dismissals

*Engelhard  
Kansas  
Talc*

**CAHILL GORDON & REINDEL**  
EIGHTY PINE STREET  
NEW YORK, N.Y. 10005

August 30, 1989

Re: Engelhard - Tiresworkers Litigation

Dear Jim:

As I mentioned to you previously, for a number of months Engelhard has been actively seeking a dismissal from the tiresworkers litigation pending in federal and state court in Pennsylvania on the ground that Engelhard's talc did not contain asbestos. Our main support for this contention was an affidavit prepared by an expert on talc, William Ashton, who reached this conclusion based on his review of numerous reports, studies and analyses of the talc from Engelhard's only talc mine in Vermont.

Last week, plaintiffs' counsel in Pennsylvania agreed to dismiss Engelhard from the tiresworkers litigation on this basis. I believe that a similar dismissal is warranted in all other jurisdictions where a tiresworkers lawsuit is pending. In this regard, I am enclosing the following documents pertaining to our discussions with plaintiffs' counsel in Pennsylvania:

a. My cover letter of May 17, 1989 to Jeff Schwartz, plaintiffs' counsel in Philadelphia, enclosing the affidavits of William Ashton and Charles Carter;

b. the September 20, 1988 affidavit of Charles Carter of Engelhard;

BASF FC 0014629

Kansas

**OTT & PURDY, LTD.**  
ATTORNEYS AT LAW  
SECURITY CENTER NORTH, SUITE 1100  
300 SOUTH LAMAR STREET  
JACKSON, MISSISSIPPI 39201

October 30, 1989

FEDERAL EXPRESS #3775605024

Herschel Hobson, Esq.  
The Law Offices of Herschel L. Hobson  
2150 Harrison Avenue  
Beaumont, Texas 77701

FEDERAL EXPRESS #3775605024

C.E. Sorey, Jr., Esq.  
Ramsey, Andrews & Sorey  
Post Office Box 1359  
Vicksburg, Mississippi 39181

RE: Stanley Bernat, et al. v. Armstrong World Industries, Inc., et al.; No. S89-0557(G)

Gentlemen:

As you know, we represent Engelhard Corporation whose former wholly-owned subsidiary, Eastern Magnesite Talc Co., is a defendant in Stanley Bernat, et al. v. Armstrong World Industries, Inc., et al., No. S89-0557(G), currently pending in the United States District Court for the Southern District of Mississippi.

Based on the information which I am enclosing with this letter -- which convincingly demonstrates that Engelhard's talc did not contain asbestos -- I believe that Engelhard/Eastern Magnesite Talc should be dismissed from the Bernat lawsuit and from any other similar tiresworker lawsuits which you may serve on Engelhard in the future. A short time ago, Bob Williamson of this office had a brief telephone conversation with one of the attorneys in your office in regard to this matter. He indicated that he would not be interested in receiving the information Mr. Williamson proposed to send you and that no dismissal of our client would be considered.

We believe, however, that it is important for you to actually have and be able to review the material to which Mr. Williamson made reference in his telephone conversation. We are, therefore, taking the liberty of enclosing this material and we urge you to give it your most serious consideration. Based on this

BASF\_WILLIAMS000318025

Mississippi

**WESTON HURD**  
**FALLON PAISLEY & HOWLEY**  
COUNSELLORS AT LAW  
2500 TERMINAL TOWER • CLEVELAND, OHIO 44113-2241 • 216/241-6602  
OHIO TOLL FREE 800/738-4951 • FAX 216/231-6389

January 2, 1990

Michael F. Colley, Esq.  
Hoster & High Building  
536 South High Street  
Columbus, Ohio 43215

Re: Engelhard/Eastern Magnesite Talc Co. -  
Tiresworkers Litigation  
Our File No.: 15241-07866

Dear Mr. Colley:

As you know, I represent Engelhard/Eastern Magnesite Talc Co., which is named as a defendant in the tiresworker cases that you have filed in Summit County Common Pleas Court.

I have received your letter of December 21, 1989. This letter is to request that you voluntarily dismiss Engelhard Corporation and its former wholly-owned subsidiary, Eastern Magnesite Talc Co. ("EMTAL") from the tiresworker cases that you have filed in Summit County Common Pleas Court. The basis for this request is that we have determined that the talc that was produced by EMTAL did not contain any asbestos. I am enclosing a packet of documents that supports this request. Under these circumstances, there does not seem to be any basis to keep Engelhard or EMTAL as named defendants in these lawsuits. I am sure that you can appreciate the substantial expense that is being incurred by Engelhard as a result of being named as a defendant in these lawsuits.

There is precedent for my request. Engelhard and EMTAL were named as defendants in 28 lawsuits brought on behalf of former tiresworkers at the B.F. Goodrich plant in Oak, PA. Those lawsuits were filed in the Eastern District of Pennsylvania. I am enclosing the documents and materials that were provided to Jeffrey C. Schwartz of the Allen L. Rothenberg law firm in Philadelphia, PA. I am advised that after Mr. Schwartz had an opportunity to review these materials, he was satisfied that the talc produced by Engelhard and EMTAL did not contain any asbestos, and therefore, he voluntarily dismissed Engelhard and EMTAL from the tiresworker litigation in Philadelphia.

BASF\_WILLIAMS000108382

Ohio



*Eng-Mich Talc*

**WISE & MARSAC**  
ATTORNEYS AND COUNSELORS  
PROFESSIONAL CORPORATION  
1114 FLOOR DUHL BUILDING  
DETROIT, MICHIGAN 48226  
(313) 588-0643

January 12, 1990

Ms. Phoebe Corry  
LOPATIN, MILLER, FREEDMAN, BLUESTONE,  
ERLICK, ROSEN & BARTNICK  
1301 East Jefferson Avenue  
Detroit, MI 48207-3119

RE: TIREWORKER CLAIMS AGAINST PITA REALTY

Dear Ms. Corry:

As you know, this firm is local counsel for Defendant Pita Realty Limited, f/k/a, Eastern Magnesia Talc Company in the asbestos personal injury cases filed by your firm. Enclosed are the materials to which Jerry D'Avanzo referred in his telephone conversation with you yesterday. We ask that your firm review the enclosed materials and dismiss Pita from the cases you have filed for the reason that its talc does not contain asbestos.

Enclosed are affidavits of Charles D. Carter, Director of Joint Ventures and Resources of Englehard Corporation, dated September 20, 1988 and June 19, 1989. Mr. Carter's affidavits demonstrate that Pita's only talc mine was located in Johnson, Vermont, and that Pita ceased producing talc in 1983, when the mine was closed for economic reasons.

Also enclosed is an affidavit by William H. Ashton, who has been involved in investigating and studying the talc industry and talc technology for over 35 years. Mr. Ashton's affidavit summarizes a number of reports and studies of the talc produced at the Johnson, Vermont talc mine that was owned and operated by Pita. The unequivocal conclusion reached by all of these investigations is that talc from the Johnson, Vermont mine, which was Pita's only talc mine, did not contain asbestos.

Included among the various studies and reports referred to in Mr. Ashton's affidavit are two separate 1982 analyses of the talc from the Johnson mine. Both of those analyses concluded, based on (i) scanning electron microscopy and energy dispersive spectroscopy, and (ii) x-ray diffraction analysis and analytical transmission electron microscopy, respectively, that no asbestos

BASF FC 0009089

*file  
Engelhard -  
Arkansas Talc*

**CAHILL GORDON & REINDEL**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
1990 K STREET, N.W.  
WASHINGTON, D.C. 20006  
TELEPHONE 202-462-8000

April 23, 1990

Re: Arkansas Tireworker Litigation

Dear Jim:

I tried unsuccessfully to reach you on a number of occasions last week concerning our request for a dismissal in the Brook action with respect to our client, Eastern Magnesia Talc Company ("EMTalc"). On April 20, 1990, I received a message from your secretary informing me that you need to have your expert review the matter.

I had assumed from our previous conversations that this had been done, especially when you told me a few months ago that your conclusion was that EMTalc should be dismissed on the basis of the materials we provided to you. Regardless, it is now April 23rd and our current extension of time in which to answer or otherwise respond to your clients' Complaint is due to run on April 30th. I trust that you will handle this matter in an expeditious fashion. However, unless you inform me otherwise, I believe that we will need to take an additional extension of time; the only question is whether this extension should be for more than one month. Please contact me immediately at (202) 662-8964 so that we can discuss this matter further.

BASF FC 0000001

**CAHILL GORDON & REINDEL**  
EIGHTY PINE STREET  
NEW YORK, N.Y. 10005-1702

October 25, 1996

Re: Motta v. Whittaker, Clark & Daniels, et al., No. 96-4434B

Dear Robin:

I enjoyed speaking with you yesterday. As I stated, this firm represents Engelhard Corporation ("Engelhard"), which is named as a defendant in the above-referenced action which you recently filed in the Superior Court for Suffolk County. The complaint alleges the wrongful death of plaintiff's decedent Thomas Motta as a result of exposure to talc while he was employed at Plymouth Rubber Company.

Engelhard's only connection with the mining, milling, or sale of talc was through a subsidiary, Eastern Magnesia Talc Company ("EMTalc"), which operated a single mine in Johnson, Vermont from October 1967 until 1983, when the mine was closed for economic reasons. As we discussed, this letter is to request that you voluntarily dismiss Engelhard from this action, on the basis that talc produced by EMTalc at its mine contained no asbestos and therefore could not have caused Mr. Motta's death. I am enclosing the following documents supporting this request:

BASF\_WILLIAMS000140734

Michigan

Arkansas

Massachusetts

See examples as App'x A



Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 71 of 130 PageID: 31681

# Frivolous Lawsuit Sanctions Threatened in New Jersey

LITTLETON JOYCE  
UGHETTA PARK & KELLY LLP  
NEW YORK CITY | PURCHASE, NY | RED BANK, NJ

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1256 Half Mile Road  
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Red Bank, NJ 07701  
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www.littletonjoyce.com

March 28, 2008

Rachel A. Placitella, Esq.  
Cohen, Placitella & Roth, P.C.  
127 Maple Avenue  
Red Bank, NJ 07701

Re: Angeline Comandini vs. Asbestos Corporation Limited, et als  
Docket Nos. : MID-L-4398-07 AS  
Our File No. : 08951.00005  
Vivian Volk vs. Asbestos Corporation Limited, et als  
Docket Nos. : MID-L-10012-07 AS  
Our File No. : 08951.00004  
Joanne Fuschino, et al. vs. Asbestos Corporation Limited, et als  
Docket Nos. : MID-L-10859-07 AS  
Our File No. : 08951.00006

Dear Ms. Placitella:

As you are aware, this office represents Defendants Eastern Magnesite Talc ("EMTAL") (now known as Pita Realty Ltd.) and BASF Catalysts LLC ("BASF") in the above referenced matters. Enclosed herewith are the various Notices of Adoption of the Standard Answer recently filed on behalf of our clients. As set forth in the pleadings and in further detail below, EMTAL and BASF did not manufacture asbestos-containing talc. Accordingly, we hereby request that the plaintiffs voluntarily dismiss with prejudice their complaint against our clients.

Attached hereto is an Affidavit from William H. Ashton that sets forth the history of the Vermont talc mines and more specifically, the history of the talc mined by Englehard Corporation (and its predecessors) from the talc mine located in Johnson, Vermont (the "Johnson mine"). As set forth in Mr. Ashton's Affidavit, after numerous investigations, examinations and studies of the Johnson mine, spanning more than fifty (50) years, it has been conclusively established that the talc from the Johnson mine does not contain asbestos. As such, there is no reasonable basis to support proceeding with the plaintiffs' claims against EMTAL and BASF.

Pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1, we hereby demand that the complaints be voluntarily dismissed because, based on the foregoing, the allegations against EMTAL and BASF are frivolous. If the plaintiffs fail to comply with this request within twenty eight (28)

**"[I]t has been conclusively established that the talc from the Johnson Mine **does not contain asbestos**. As such, there is no reasonable basis to support proceeding with the plaintiffs' claims against EMTAL and BASF. Pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1 we hereby **demand** that the complaints be voluntarily **dismissed** because, based upon the forgoing, the **allegations against EMTAL and BASF are frivolous**."**

03/28/2008

# Engelhard Witnesses Swore to Fraudulent Discovery Responses

SUPREME COURT OF THE STATE OF NEW YORK  
ALL COUNTIES WITHIN NEW YORK CITY  
In re: NEW YORK CITY ASBESTOS LITIGATION :  
ESTATE OF STEVEN CHERNICK and ROSANNE CHERNICK, :  
: Plaintiffs, :  
-against- :  
ABB LUMMUS GLOBAL, INC., et al., :  
Defendants. :  
X

## RESPONSES BY ENGELHARD CORPORATION STANDARD SET OF LIABILITY INTERROGATORIES

Defendant Engelhard Corporation ("Engelhard Minerals and Chemical Corporation") hereby  
Standard Set of Liability Interrogatories ("Standard Set of Liability Interrogatories")  
Steven and Rosanne Chernick:

### GENERAL OBJECTIONS

1. Engelhard objects to the Standard Set of Liability Interrogatories as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome.
2. Engelhard objects to the Standard Set of Liability Interrogatories as ambiguous and unintelligible.
3. Engelhard objects to the Standard Set of Liability Interrogatories as information protected from disclosure by the attorney-client privilege.

to this Interrogatory on the ground that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving the foregoing objection, Engelhard responds that it has no particular knowledge regarding any of the Subjects of this Interrogatory, other than (b). As to (b), Engelhard neither manufactured nor sold any of the listed asbestos products. Engelhard does contend that its products are not harmful. More specifically, with reference to the instant litigation, Engelhard contends that the talc it supplied to Bondo was asbestos-free. The facts upon which Engelhard bases this contention include the following:

The talc that Engelhard sold to Bondo was sold through Engelhard's former subsidiary EMTal (later known as Pita). The only talc mine operated by EMTal (and accordingly Engelhard) was located in Johnson, Vermont. EMTal produced talc from that mine from October 1967 (when EMTal acquired the mine) until 1983 (when the mine was closed for economic reasons). A number of analyses of the Johnson mine have been conducted, and all of them have concluded that the talc produced from this mine did not contain asbestos. For example, a 1977 study for NIOSH analyzed 100 talc samples, including a sample of EMTal talc, by Polarized Light Microscopy, Dispersion Staining, x-ray diffraction, Transmission Electron Microscopy ("TEM"), and Electron Microprobe. The analysis of the sample of EMTal talc found no asbestos. A 1982 study of a sample from the Johnson mine also found no asbestos in the talc. This study used Scanning Electron Microscopy, Energy Dispersive Spectroscopy, x-ray diffraction analysis, and TEM. The absence of asbestos from the

**"A number of analysis of the Johnson mine have been conducted, all of them have concluded that the talc produced from this mine did not contain asbestos."**

**Submitted in  
New York in  
Chernick case.**

**2002**

# Engelhard Witnesses Swore to Fraudulent Discovery Responses

SUPREME COURT OF THE STATE OF NEW YORK  
ALL COUNTIES WITHIN NEW YORK CITY

In re: NEW YORK CITY ASBESTOS LITIGATION :  
ESTATE OF STEVEN CHERNICK and ROSANNE CHERNICK, :  
Plaintiffs, :  
-against- :  
ABB LUMMUS GLOBAL, INC., et al., :  
Defendants. :X

RESPONSES BY ENGELHARD CORPORATION  
STANDARD SET OF LIABILITY IN

Defendant Engelhard Corporation ("Engelhard Minerals and Chemical Corporation") hereby  
Standard Set of Liability Interrogatories ("Standard Set of Liability Interrogatories")  
Steven and Rosanne Chernick:

GENERAL OBJECTIC

1. Engelhard objects to the Standard Set of Liability Interrogatories as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, unduly burdensome, trial, overly broad, and unduly burdensome.

2. Engelhard objects to the Standard Set of Liability Interrogatories as ambiguous and unintelligible.

3. Engelhard objects to the Standard Set of Liability Interrogatories as information protected from disclosure by the attorney-client privilege.

its employees was engaged in the manufacture or use of asbestos products. Engelhard has no knowledge of any deaths or cases of lung disease or lung impairment, prior to 1976, that were attributable to, or were alleged to be caused by, the occupational inhalation of asbestos dust or fibers.

**Interrogatory No. 63:**

If any of your employees or officers have testified at trial or by deposition or before any Congressional Committee or administrative agency concerning asbestos exposure, pulmonary or asbestos-related diseases or industrial hygiene relating to asbestos use, state:

a. The name, address and title of each person who testified;  
b. The date, location and forum of such testimony;  
c. Whether the defendant has a copy of such testimony;  
d. Whether the defendant will voluntarily produce a copy of such testimony.

**Response to Interrogatory No. 63:**

No.

**Interrogatory No. 64:**

Have you or any employee of yours ever communicating (sic) with an agency or department of the United States concerning specifications and/or standard for any asbestos product or thermal insulation product? If so state separately for each product or set of specifications:

a. Identify each such product and its military or federal specification or standard;  
b. The intended purpose or use for the product so specified;  
c. The date, time and place of each communication including:  
(1) The name of each of your agents or employees who participated in each communication;  
(2) The names, titles, and agencies of each individual with whom such communication was had;  
(3) The subject of the communication;  
(4) Whether any notes, minutes or memoranda in any form were recorded of such communication or of any meetings between you and the agency;

35

2002

## Interrogatory No. 63:

If any of your employees or officers have testified at trial or by deposition or before any Congressional Committee or administrative agency concerning asbestos exposure, pulmonary or asbestos-related diseases or industrial hygiene relating to asbestos use, state:

- The name, address and title of each person who testified;
- The date, location and forum of such testimony;
- Whether the defendant has a copy of such testimony;
- Whether the defendant will voluntarily produce a copy of such testimony.

## Response to Interrogatory No. 63:

No.

No Prior Testimony

Submitted in New York in *Chernick* case.

**Pita did not mine, mill,  
manufacture, market, distribute,  
or rebrand asbestos or asbestos  
containing products.**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE ASBESTOS PRODUCTS  
LIABILITY LITIGATION (No. VI)

This Document Relates To:  
All Actions

MDL No.

ANSWERS, OBJECTIONS AND RESPONSES OF PITA  
HERBY KNOWN AS EASTERN MAGNESIA TALC  
ENGELHARD CORPORATION TO OWENS-CORNING  
CORPORATION'S INTERROGATORIES AND REQUESTS

PRELIMINARY STATEMENT

These interrogatory responses are  
of Defendants Pita Realty Limited ("Pita"),  
Eastern Magnesia Talc Company ("EmTal"), an  
tion ("Engelhard"), which has been named in  
solely by virtue of the fact that it owns 1  
Pita. The responses by Engelhard do not co  
sion that it is in any way liable for any a  
by EmTal or Pita, which were and/or are sep  
dent corporations, and are limited solely t  
ities as they relate to the operations of E

-2-

For purposes of simplifying the responses to these Interroga-  
tories, the name Pita when used herein shall refer collectively  
to Pita, EmTal, and Engelhard.

Pita did not mine, mill, manufacture, process, mar-  
ket, distribute, rebrand or sell asbestos or asbestos-  
containing products. Virtually every one of these  
interrogatories -- which were drafted in and for litigation  
against asbestos defendants -- either speak directly of asbes-  
tos or asbestos-containing products or presuppose some connec-

asbestos-containing products. Since it was not engaged in any  
such activity, Pita indicates a response of "Not Applicable" to  
such interrogatories.

The following answers are believed to be accurate as  
of the date of filing, but Pita's investigation of the underly-  
ing facts is continuing.

Pita hereby incorporates by reference this prelimi-  
nary statement into the response to each interrogatory.

GENERAL OBJECTIONS

a. The Interrogatories ("Interrogatories") to Pita  
are objectionable as they are overly broad, compound, complex,

2002



**App'x B, Tab N**

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

IN RE BEVAN GROUP 14  
Mary Adams, et al.

Case No. CV-627038

Plaintiff,

JUDGES: HARRY S. HANNA  
LEO SPELLACY

vs.

GOODYEAR TIRE & RUBBER CO., et al., )

Defendants.

**DEFENDANT EASTERN MAGNESIA TALC'S RESPONSES TO PLAINTIFFS' FIRST  
MASTER SET OF INTERROGATORIES**

**DEFENDANT EASTERN MAGNESIA TALC'S RESPONSES TO PLAINTIFFS' FIRST  
MASTER SET OF INTERROGATORIES**

in excess of those expressly set forth in Ohio Rules of Civil Procedure and the case management orders in existence for these cases. EMT also objects to these discovery requests in that they are, as a group, overly broad and excessively burdensome.

2. Further, although EMT has made a good faith effort to respond to those discovery requests to which it has not objected in making such response, EMT does not purport to have adopted or applied any definitions set forth at the outset of or at places in these discovery requests, nor has EMT assumed the improper, unproved, and hypothetical facts proffered by plaintiffs. Additionally, EMT has not accepted the terminology or substance of plaintiffs' claims incorporated in, implied in, or alluded to within these discovery requests. EMT further objects to



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- a. the name of the entity involved in the placing of asbestos products into the stream of commerce;
- b. the manner in which the entity was involved in the placing of asbestos containing products into the stream of commerce (i.e., mining, milling, manufacturing, distributing, installing, rebranding, etc.);
- c. the specific products placed into the stream of commerce by the entity year by year and by brand or trade name;
- d. the name, positions and a brief description of the responsibilities of the person or persons serving the answering defendant and the entity simultaneously including the positions held with the entity and with the answering defendant.

**EVER SELL ASBESTOS**

5. Has Defendant ever engaged in the mining, manufacturing, selling, marketing, installation or distribution of asbestos-containing products (including equipment of any kind containing asbestos in any form)?

2. Its identification number, product, serial number, etc.
3. The time period it was manufactured, mined, marketed, distributed or sold.
4. Its physical description including color, general composition, and form.
5. A detailed description of its intended use and purpose.

6. A detailed description of the type package in which it was sold, listing the dates of each type of package used, a physical description of the package, and a description of any printed material or trademarks that appeared thereon.
  7. The percent of asbestos which it contained.
  8. The percent of asbestos by asbestos type (amosite, crocidolite, tremolite, anthophyllite).
- (c) The time period during which each of these products were on the market;
- (d) The material components/ingredients of each such product, giving specific or approximate percentage both by weight and by volume of each material component/ingredient (this interrogatory is not limited to the asbestos component of the product but seeks information as to the nature, weight and volume of non-asbestos ingredients, as well) of each such product;
- (e) How each of these asbestos-containing product can be

**ANSWER: No.**

For any product listed in response to Interrogatory No. 5, please state the following:

- (a) The date of each patent;
- (b) The date same was issued;
- (c) The number of each patent application that is pending.

ANSWER: Not applicable; see response to Interrogatory No. 5.



Misrepresentations Were Made  
Directly to Judges Charged  
with Administering Justice

# Misrepresentations Were Made Directly to Judges Charged with Administering Justice

RVV DT-1212 ZON DAZU : 8-14-89 4:28PM (MILLER) DUBOIS  
G. 14. HM 114111 PM #DILWORTH PHILA  
MILLER DUBOIS 14 4  
FOE

LAW OFFICES  
DILWORTH, PAXSON, KALISH & KAUFFMAN  
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PHILADELPHIA, PENNSYLVANIA 19104-1086  
TELE 873-7000  
CABLE ADDRESS: KETIM, TELE 87-228  
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WILMINGTON, D.C.  
WEST ATLANTIC CITY, NEW JERSEY  
DANFORD, NEW JERSEY  
DIRECT DIAL (610) 873-7322

August 14, 1989

PROCESSED BY THE FIRM  
MILLER & DUBOIS

RECEIVED  
AUG 15 1989  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
PHILADELPHIA OFFICE

The Honorable Charles E. Weiner  
United States District Court  
Eastern District of Pennsylvania  
U.S. Courthouse, Room 6011  
601 Market Street  
Philadelphia, PA 19106

Re: Fireworkers' Litigation  
August 18, 1989, 2:00 p.m. meeting

Dear Judge Weiner:

We are local counsel in the Fireworkers' Litigation representing Engelhard Corporation/Eastern Magnesia Talc Company.

We will be attending the August 18, 1989 2:00 p.m. general meeting before Your Honor, and respectfully request that we have a brief conference with Your Honor and plaintiffs' counsel immediately after the general meeting to discuss our long-standing request to plaintiffs' counsel for dismissal. An attorney from the firm of Cahill Gordon & Reindel, national counsel for the client, will also be attending the meeting.

I spoke to one of your clerks, Chris, on August 10, and he suggested that we speak to you immediately after the general meeting regarding the foregoing.

By way of background, the following is a summary of our efforts to have our client voluntarily dismissed from this litigation. In short, we have provided plaintiffs' counsel with every item of information they have requested to demonstrate both

**“There was no asbestos in our talc...Mr. Ashton concludes that our client’s talc did not contain asbestos.”**

\*\*\*

**Disregarding the forgoing, plaintiffs’ counsel have failed and refused to dismiss our client from this litigation to the great expense and detriment of our client...”**

**To the Federal MDL Judge Charles Weiner**  
**08/14/1989**



# Misrepresentations Were Made Directly to Judges Charged with Administering Justice

Case 2:11-cv-01764-BRM-AMS Document 5-1-29 Filed 05/17/18 Page 51 of 130 PageID:  
31091

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF

ADAMS, RALPH N. Case No.  
Plaintiff, Hon. Chad  
vs  
A. P. GREEN SERVICES, ET AL.,  
Defendants.

LOPATIN, MILLER, FREEDMAN, BLUESTONE,  
ERLICH, ROSEN & BARTNICK  
By: Robert E. Boyd III (P45554)  
1301 E. Jefferson Avenue  
Detroit, MI 48207-3197  
(313) 229-7800  
Attorneys for Plaintiffs  
BUTZEL LONG  
By: Daniel P. Malone (P29470)  
Lynn A. Sheehy (P38162)  
150 W. Jefferson, Suite 900  
Detroit, Michigan 48226  
(313) 229-7000  
Attorneys for Defendant,  
PITA REALTY LIMITED

DEFENDANT PITA REALTY LIMITED  
MEDIATION SUMMARY

This Mediation Summary is submitted by Pita Realty Limited, formerly known as Eastern Magnesia Talc Company ("EmTal"), the only defendant left in this case. The plaintiff worked at the Goodyear tire plant in Jackson, Michigan, and complains of lung disease allegedly caused by his exposures to dusts at Goodyear.

While plaintiff initially named a number of manufacturers of asbestos-containing products used in industry, this is no longer an asbestos case. EmTal talc did not contain any asbestos. Even plaintiffs' expert admits that talc which does not contain asbestos — pure talc — would not produce the disease the plaintiff claims.

Because of the demonstrably harmless nature of pure talc, most plaintiffs who sued EmTal in courts around the country eventually dismissed their claims against EmTal without any payment by EmTal. Indeed, the same law firm as represents this plaintiff previously dismissed 28 similar tireworkers cases pending in Wayne County without any payment by EmTal. Twenty six of those cases were dismissed with an agreement that plaintiffs could reassert their claims against EmTal in the event that "medical and scientific experts attest, by sworn affidavit, that an EmTal talc product was a substantial contributing cause of the injuries allegedly suffered by Plaintiffs or Plaintiffs' Decedents". In an effort to end tireworker litigation against it, EmTal has recently contributed to a settlement of all of the federal

-2-

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## “EMTAL TALC DID NOT CONTAIN ASBESTOS”

“While talc from other geographic locations may contain asbestos, it is **undeniable** that **EmTal talc** which came from a single mine in Johnson Vermont — **did not contain asbestos.**”

To the Judge Presiding Over Michigan Cases

Representative examples in App'x B





# Misrepresentations Were Made Directly to Judges Charged with Administering Justice

Case 2:11-cv-01754-BRM-AME Document 5-1-29 Filed 05/17/18 Page 53 of 130 PageID:  
31093

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR  
C.A. NO.

JAMES F. KRAMER, individually and as Executor  
of the Estate of WILLEMINA KRAMER,  
Plaintiff

v.

EASTERN MAGNESIA TALC COMPANY,  
et al.,  
Defendants

## DEFENDANT EASTERN MAGNESIA TALC COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendant Eastern Magnesia Talc Company ("Emtal") submits this Memorandum  
in support of its Motion for Summary Judgment.

### I. INTRODUCTION

Defendant Emtal is entitled to a grant of summary judgment in its favor because, as a matter of law, based on the undisputed material facts, the plaintiff is unable to prove the elements of his case against Emtal: (1) the plaintiff will be unable to prove that the decedent, Willemmina Kramer ("Mrs. Kramer") was exposed to an asbestos-containing mined, manufactured, supplied, and/or sold by Emtal; (2) the plaintiff will not be able to prove that Emtal talc contained asbestos; and/or (3) the plaintiff will not be able to prove that talc causes mesothelioma. Accordingly, as set forth below, given that as a matter of law the plaintiff lacks a reasonable expectation of proving at trial essential elements of his case, the plaintiff respectfully requests that this Honorable Court allow its Motion for Summary Judgment to Mass. R. Civ. P. 56 and issue an Order dismissing the plaintiff's action against Emtal with prejudice.

Works between 1942 and 1948, which the Plaintiff has not proven, the Plaintiff has offered no evidence to show that Mrs. Kramer's work exposed her to Emtal talc that contained asbestos and/or that exposure to talc causes mesothelioma. The Plaintiff's general identification of Emtal products in Plaintiff's Disclosure Form and First Amended Disclosure Form does not constitute proof of exposure to an asbestos-containing product that would render Emtal liable for Mrs. Kramer's alleged injury and death, as it is insufficient merely to allege the presence of an Emtal product at the jobsites at which Mrs. Kramer worked. As a result, the Plaintiff will be unable, as a matter of law, to prove causation, an essential element of his action, at trial.

Therefore, because the Plaintiff has no reasonable expectation of proving a critical element of his case, namely that Mrs. Kramer's alleged injury and death resulted from exposure to asbestos-containing talc allegedly mined, manufactured, and/or sold by Emtal, or, alternatively, that the plaintiff's injury and death from mesothelioma was caused by exposure to Emtal talc, Emtal is entitled to summary judgment as a matter of law.

### B. Emtal is not liable to the Plaintiff for Loss of Consortium because it is not liable for the alleged injury and death of Mrs. Kramer on any theory.

Under Massachusetts law, a spouse's loss of consortium claim is independent of and distinct from the underlying claim. See *Marques*, 28 Mass. App. Ct. at 282. If a Defendant has no liability on the underlying claim, however, then the Defendant cannot be held liable for a spouse's loss of consortium claim. See *Id.* The plaintiff's claim is derivative of the claim of his decedent, Mrs. Kramer, in that should Mrs. Kramer claim against Emtal for her alleged injuries and death fail, the consortium claim of the Plaintiff is no longer viable. See *Short*, 11 Mass. App. Ct. at 910.

Here, as set forth above, the Plaintiff has no reasonable expectation of proving that Mrs. Kramer's alleged injury and death was substantially caused by exposure to asbestos-containing

**"The plaintiff will not be able to prove the Emtal talc contained asbestos.**

**\*\*\***

**The plaintiff has no reasonable expectation of proving that Mrs. Kramers alleged death was substantially caused by exposure to asbestos containing talc allegedly manufactured by Emtal"**

**SJ Brief filed in Massachusetts  
03/29/2009**

# Admissions Lies Told



Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 85 of 130 PageID: 31095

# What Do BASF's Own Witnesses Admit To?

Hemstock Testifies About Ashton Aff.



**Q.** From everything you know and the studies you were in charge of, is that an accurate statement?

**A.** No, it is not an accurate statement.

Poole Testifies That Ashton Aff. Is Untrue And Misleading



**Q.** Based upon . . . all the tests that you conducted . . . is this a true statement that it's "free from contamination by asbestos"?

**A.** There were tests that showed there was contamination by asbestos.



Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 86 of 130 PageID:  
3186

# Was the Carter Affidavit Used to Dismiss Cases True?



**Q. In addition, Engelhard does not currently possess any testing data, other than the data provided to you by way of the Ashton affidavit and the report of Dr. Pooley.**

**Was that a true statement made by Mr. Carter under oath under penalty of perjury in 1989?**

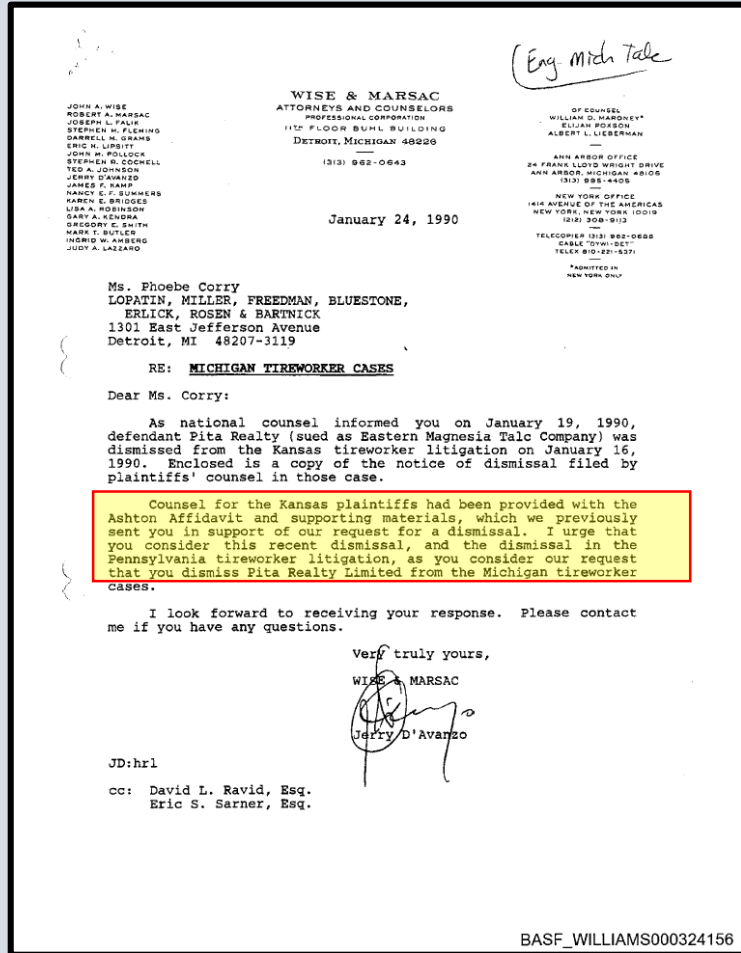
**A. I don't know what was in Mr. Carter's mind at the time, but it appears not to be true on the surface of it, on the face of it."**

Admissions Lies Worked

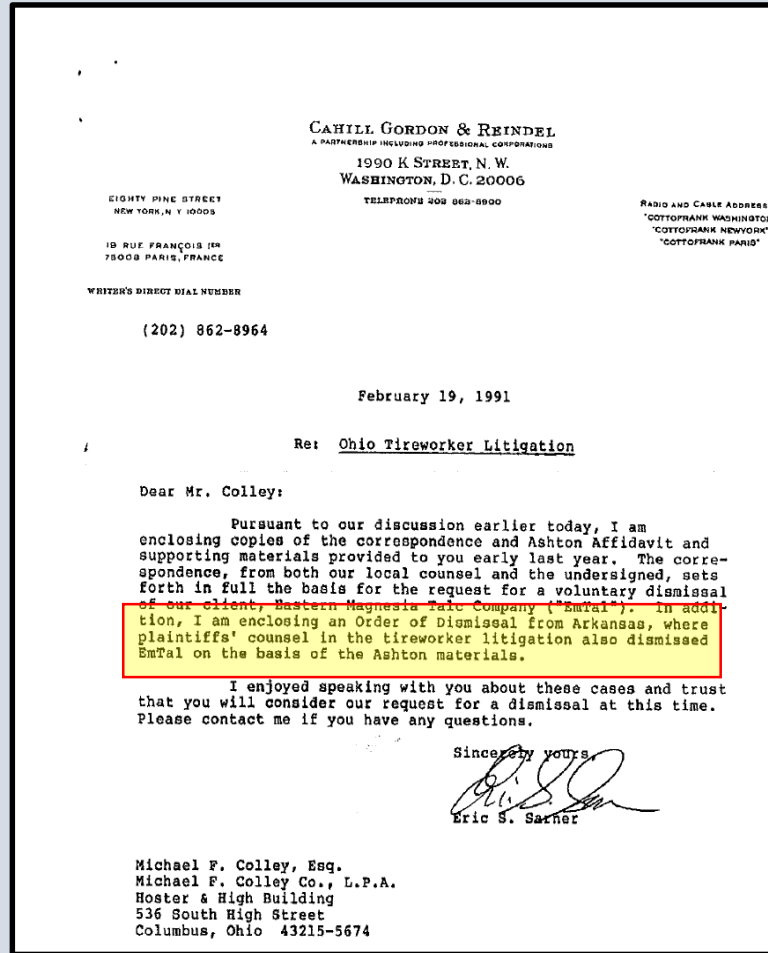


# BASF Attorneys as Officers of Court Represented Cases Dismissed Based Upon No Asbestos Representation

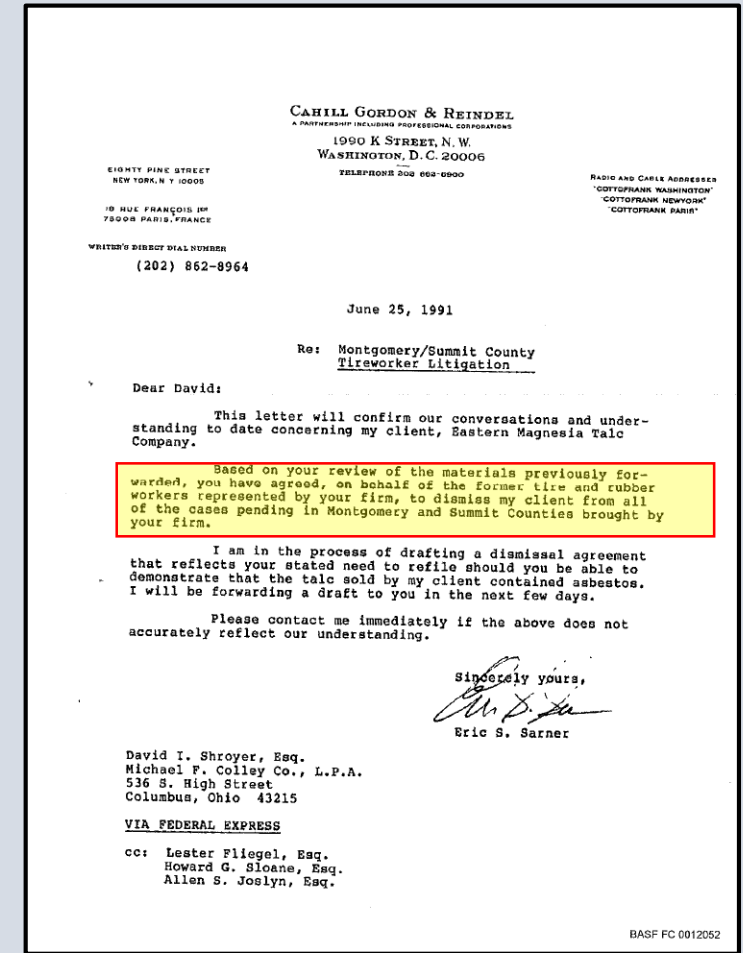
Case 2:13-cv-01754-BRM-AMM Document 521-29 Filed 05/07/16 Page 88 of 140 PageID  
31098



Kansas & PA cases dismissed



Arkansas cases dismissed



Ohio cases dismissed

Representative samples in App'x A



# BASF Attorneys as Officers of the Court Represented Cases Dismissed Based Upon No Asbestos Representation

Case 2:11-cv-01754-BRM-AMF Document 521-29 Filed 05/17/18 Page 69 of 180 PageID  
31099

CAMILL GORDON & REINDEL

CAMILL GORDON & REINDEL

- 2 -

- (5) A copy of a B.F. Goodrich specification sheet dated November 10, 1978 for EmTal 500 talc.

In reviewing these documents, you will note that EmTal's (and, accordingly, Engelhard's) only talc mine was located in Johnson, Vermont, and that EmTal produced talc from that mine only from October 1967, when EmTal acquired the mine, until 1983, when the mine was closed for economic reasons. (See Carter Affidavits.) The Affidavit of William H. Ashton summarizes numerous investigations, examinations, and studies of the Johnson mine. The conclusion derived from all of these studies is that the talc produced from this mine did not contain asbestos. A sample from the Johnson talc mine was analyzed in 1982 using scanning electron microscopy and energy dispersive spectroscopy, as well as x-ray diffraction analysis and analytical transmission electron microscopy. The analysis revealed that no asbestos was present in the sample. (See Ashton Affidavit paragraph 7.)

Under the circumstances, there appears to be no basis for maintaining Engelhard as a named defendant in these actions. I am sure that you can appreciate that considerable expense has been and will be incurred by Engelhard as a defendant in these cases, and that this dismissal request merits immediate attention.

There is substantial precedent for my request. For example, Engelhard and EmTal were named as defendants in 28 cases brought on behalf of former tireworkers at the B.F. Goodrich plant in Oaks, Pennsylvania and filed in the Eastern District of Pennsylvania. The enclosed documents were provided to Jeffrey C. Schwartz of the Allen L. Rothenberg law firm in Philadelphia and were reviewed by plaintiffs' expert, Dr. Arthur Rohl. After this review, Mr. Schwartz voluntarily dismissed Engelhard and EmTal from that litigation.

EmTal has also been voluntarily dismissed from tireworker litigation in, *inter alia*, the District of Kansas and Michigan state court. Those plaintiffs' counsel had also been provided with the Ashton materials described above.

BASF FC 0004358

IN THE C  
SUMM

-43-

IN RE:

NORTHERN OHIO TIREWORKER  
ASBESTOS LITIGATION

- g. The resolution of each claim.

## RESPONSE TO INTERROGATORY NO. 45

Pita objects to this interrogatory on the grounds that it is overbroad, oppressive, unduly burdensome, irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Without waiving such objections, Pita states that it has been named in tireworker suits filed in numerous states. Plaintiffs voluntarily dismissed Pita from tireworker suits filed in Arkansas, California, Kansas, Mississippi, Oklahoma and Pennsylvania. Pita was voluntarily dismissed from all but 23 cases in Michigan, and those 23 cases remain pending. The only other state in which any suits were brought against Pita is Ohio.

## INTERROGATORY NO. 46

Please state whether or not you, at any time since 1933, maintained a library of collection of medical or health related information pertaining to industrial hygiene, medicine, safety, and engineering including but not limited to collections concerning the effects of asbestos upon human health and its hazardous effects, and if so, identify:

- where said library or collection was or is located.
- who the person was and/or is who has maintained it.
- The dates such library existed;
- The number of volumes maintained therein;

In light of information  
above-captioned actions, and

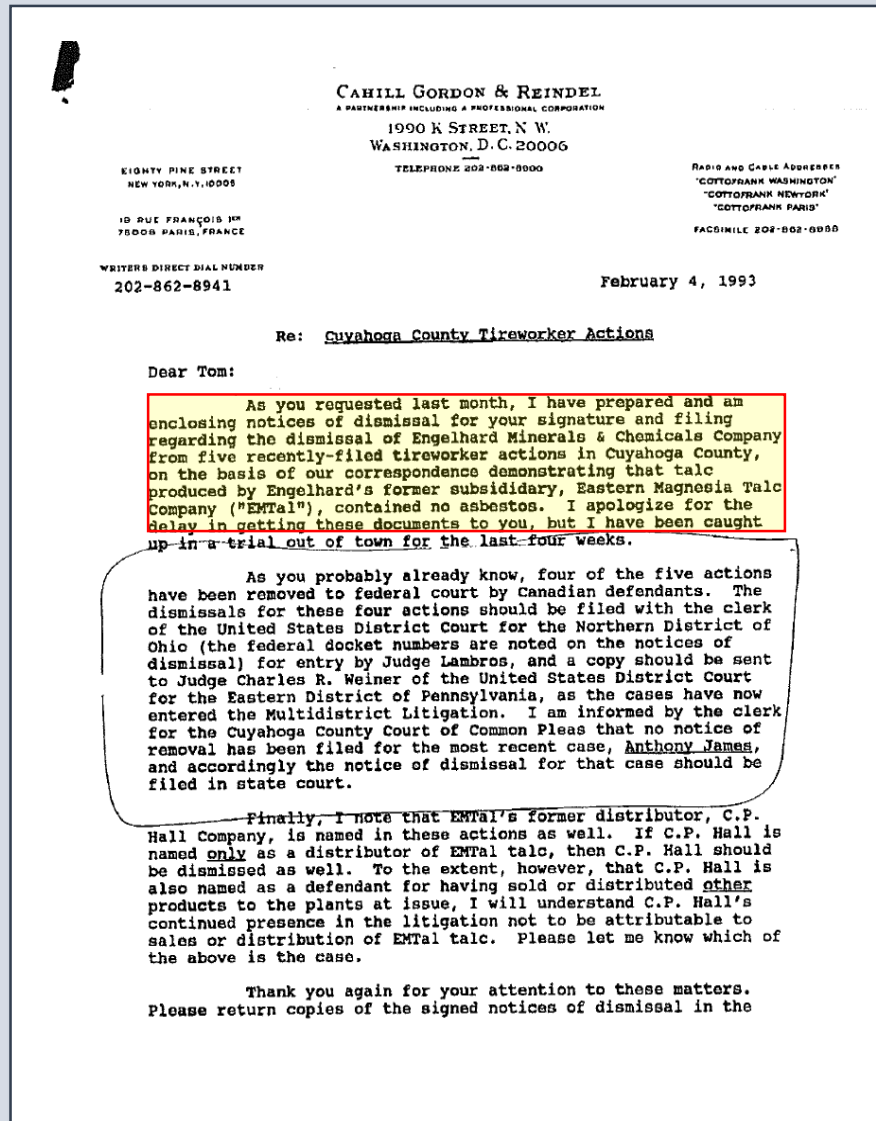
Michigan cases dismissed

California & Oklahoma cases dismissed

App'x B, Tab D

# BASF Attorneys as Officers of the Court Represented Cases Dismissed Based Upon No Asbestos Representation

Case 2:11-cv-01754-BRM-AMF Document 521-29 Filed 05/17/18 Page 90 of 130 PageID  
31100



As you requested last month, I have prepared and am **enclosing notices of dismissal of Engelhard...**from five recently filed tireworker cases in Cuyahoga County **on the basis** of our correspondence demonstrating that **talc produced by Engelhard's** former subsidiary, Eastern Magesia Talc Co ("EMTal") **contained no asbestos.**

## Bevan Cases Dismissed

1993

App'x A, Tab U

# BASF Attorneys as Officers of the Court Represented Cases Dismissed Based Upon No Asbestos Representation

Case 2:11-cv-01754-BRM-AMF Document 521-29 Filed 05/17/18 Page 94 of 180  
31101

CAHILL GORDON & REINDEL  
EIGHTY PINE STREET  
NEW YORK, N.Y. 10005

FLOYD ABRAHAM  
ROBERT A. ALICEI  
ROGER ANDRUS  
MICHAEL A. BECKER  
BRIAN BUGGLEY  
KEVIN A. BUTLER  
R. KEVIN CARTEL  
JAMES J. CLARK  
WALTER C. CLIFFORD  
BENJAMIN J. COHEN  
JOSEPH C. CONWAY  
MARSHALL COX  
THOMAS F. CURRIN  
W. LESLIE DUFFY  
PATRICIA FARBER  
BART FRIEDMAN  
CAROL A. GARDNER  
CHARLES A. GILMAN  
STEPHEN A. GREENE  
ROBERT W. HALLMAN  
EDWARD A. HANSEN  
WILLIAM M. HARTWIST  
THOMAS R. JONES  
ALLEN R. JOHNSON  
THOMAS J. KAVLER  
WILLIAM A. KOBURN  
MICHAEL KOPPEL  
EDWARD R. KRUGMAN  
WILLIAM E. LIPKARD  
MICHAEL MACRIS

JONATHAN L. MARK  
RAND MCDONALD  
GERARD M. MESTRELL  
ROGER MULLER  
CLIFFORD L. NICHOL  
JOHN A. NICHOL  
MICHAEL R. ROSE  
DONALD J. RUDEN  
BENJAMIN R. ROSE  
ROBERT L. ROSEN  
MICHAEL R. ROSEN  
DEAN RINGEL  
THOMAS ROSENTHAL  
RICHARD J. SABELLA  
H. RICHARD SCHUMACHER  
JOHN SCHUSTER  
LAURENCE A. SILVERMAN  
FRANK S. SILVERMAN  
LAURENCE T. SORAN  
LEONARD S. SORAN  
GERALD S. TADENBAUM  
MICHAEL S. TADENBAUM  
ROBERT URBAN  
JOHN R. WAGMAN  
GEORGE WALLAND  
GLENN J. WALSH, JR.  
RALPH D. WINDER  
GARY W. WOLF  
JOHN R. WOOD  
DANIEL J. ZUBROFF

August 29, 1991

Re: Summit County and Montgomery  
County Fireworker Litigation

Dear Mr. Colley:

While I could not join Eric Sarnier and Al they met with you and Mr. Shroyer in July, I am full the discussions concerning the voluntary dismissal Eastern Magnesite Talc Company ("EmTalc").

In addition to the discussions in July, we other occasions to present you with the facts concerning product.

- (1) On January 2, 1990, our local counsel, Ja forwarded to you the Affidavit of William supporting materials and requested a dismissal these materials, which indicate that the sole mine owned by EmTalc, in Johnson, Ver contain asbestos.
- (2) On March 2, 1990, having received no reply letter, Eric Sarnier wrote to you and requested.
- (3) On February 19, 1991, we wrote to you and with the Ashton materials and renewed our dismissal.

CAHILL GORDON & REINDEL

-2-

- (4) On June 6, 1991, we sent you depositions of Drs. Rohl and Chidester, as well as the 1977 NIOSH study, and again renewed our request for dismissal.
- (5) On July 12, 1991, Eric met with Mr. Shroyer of your office, as well as with you, and discussed at length these cases and our request for dismissal.
- (6) On July 16, 1991, Eric followed up the July 12 meeting with a letter to Mr. Shroyer which reduced to writing our discussions regarding a voluntary dismissal and tolling arrangement in these cases.
- (7) On July 23, 1991, Mr. Shroyer wrote Eric and stated that our proposals for tolling provisions were not that far apart.

Let's stop wasting each other's time with this. As a compromise proposal, we are prepared to extend the tolling period to three years. Our proposal will thus give you three years in which, should the facts change and your experts somehow conclude your clients could have been injured by EmTalc talc products, you can bring us back into these cases. If, contrary to virtually every other plaintiffs' fireworker counsel, you will not voluntarily dismiss us with a three year toll, we will get back to seriously litigating these cases. I need to have your answer by September 16, 1991.

Very truly yours,

*Howard G. Sloane*  
Howard G. Sloane

Michael F. Colley, Esq.  
Michael F. Colley Co., L.P.A.  
536 South High Street  
Columbus, Ohio 43215

BASF WILLIAMS000104906

Lets stop wasting each other's time...If contrary to **virtually every other** plaintiffs' tireworker counsel you will not voluntarily dismiss us ...

08/29/1991



# BASF Attorneys as Officers of the Court Represented Cases Dismissed Based Upon No Asbestos Representation

Case 2:11-cv-01754-BRM-AMF Document 521-29 Filed 05/17/18 Page 92 of 130 PageID  
31102

STATE OF RHODE ISLAND  
PROVIDENCE, S.C.

HYMAN WEISSMAN and LORRAINE J.  
WEISSMAN,

Plaintiffs,

v.

EASTERN MAGNESIA TALC COMPANY,  
BROWN COMPANY, ABC CORPORATION,  
and XYZ CORPORATION,

Defendants.

Civ. Action

RESPONSES OF  
EASTERN MAGN  
COMPANY TO P  
INTERROGATOR

-15-

## RESPONSE TO INTERROGATORY NO. 21

Pita objects to this Interrogatory on the grounds  
that it is overbroad, oppressive, unduly burdensome, irrele-

vant, and not reasonably calculated to lead to discovery of  
admissible evidence. Without waiving such objections, Pita  
states that as to its talc, it has been named in tireworker  
suits involving numerous plaintiffs and multiple defendants  
which have been filed in various state and federal courts in  
Arkansas, California, Kansas, Michigan, Mississippi, Ohio,  
Oklahoma, and Pennsylvania. Many of these cases were volun-  
tarily dismissed by the plaintiffs after they were presented  
with information similar to that which is contained in these  
interrogatory answers. All of the cases were ultimately dis-  
missed prior to trial, except that two actions in the Court of

Common Pleas for Cuyahoga County, Ohio were filed and served  
upon Pita in July of this year: Jenkins, et al. v.  
Owens-Corning Fiberglas Corp., et al., No. 291273; and Gramley,  
et al. v. Owens-Corning Fiberglas Corp., et al., No. 291275.  
No trial dates have been set for these actions.

## INTERROGATORY NO. 22

Have any grievances ever been filed by any of your  
employees complaining of or related to dusty conditions? If  
so, please state for each such grievance:

Defendant Eastern Magnesia Talc Company ("Pita")  
now known as Pita Realty Limited ("Pita"), pursuant  
of the Rhode Island Rules of Civil Procedure, hereby  
to Plaintiffs' Interrogatories to Defendant.

## PRELIMINARY STATEMENT

As used herein, the term "Pita" shall be c  
include Defendant EMTal/Pita. Pita, formerly known  
Magnesia Talc Company, was engaged in the mining and  
talc from a single mine located in Johnson, Vermont  
to 1983. The talc from this mine did not contain as

**"The talc from this mine did not contain asbestos ...**  
Pita states that as to its talc, it has been named in  
tireworker suits involving numerous plaintiffs and  
multiple defendants which have been filed in various  
state and federal courts **in Arkansas, California,**  
**Kansas, Michigan, Mississippi, Ohio, Oklahoma, and**  
**Pennsylvania.** Many of these cases were voluntarily  
dismissed by the plaintiffs after they were presented  
with information similar to that which is contained in  
these interrogatory answers. **All of the cases were**  
**ultimately dismissed prior to trial,** except that two  
actions in the Court of Common Pleas for Cuyahoga  
County, Ohio

1995

BASF FC 0014074

App'x B, Tab F

## Cases Dismissed Based Upon No Asbestos Representation



**Q And does the lawyer actually keep score in the second to last full paragraph of all the plaintiffs that your company got to dismiss their case based upon a representation that there was no asbestos in their talc?**

**A Yes.**

**Q It actually goes through all the people who relied upon that representation, does it not, in various jurisdictions throughout the United States?**

**A Yes.**



# BASF Suppresses Troublesome Evidence that Resurfaces



# How did Glassley get involved in the *Martin* case?



**Q. Tell me about your first communication with Miss Cuzzone?**

**A. As I recall, she called me on the phone, we had a brief chat, she asked me if I participated in the Westfall case. Other than that, I don't recall [where] the conversation [went]... .**

**Q. Did she say that she wanted you to offer in the Martin case the same opinions you had reached in the Westfall case?**

**A. I don't recall that it was that specific. My recollection is that it was more providing expert opinion about related issues similar to the Westfall case, but I don't . . . recall anything else.**

# What did Cuzzone provide Dr. Glassley with in the *Martin* case?



VETTER OF WHITE  
Attorneys at Law  
20 Washington Place  
Providence, RI 02903  
401-421-3908  
Fax: 401-429-4863  
e-mail: vetw@vetw.com

BY: \_\_\_\_\_

Elizabeth A. Cuzzone, Esq.  
Cuzzone Law Offices  
108 Maple Avenue  
Barrington, RI 02806

Re: Theresa Martin, Executrix of the Estate of  
Individually  
vs. Eastern Magnesia Talc Company, et al.

Dear Ms. Cuzzone:

I spoke with my client following  
showed me some information that you believe  
contained asbestos. However, you candidly ad  
from that mine contained asbestos. And one let  
identified as a potential expert made a "typograp  
asbestos.

You indicated to me that you we  
that he would develop further favorable informa  
undertake that effort and expense, you should  
point will not shake the faith that my client has  
knowledge - from a variety of sources and deve  
the Johnson mine does not contain asbestos.

I have sent some of these materia  
however, I believe it worthwhile to review some  
records detailing the appropriate references.

Tab 1. A U.S. Geological Survey  
whom your potential expert has previously ident  
generally and the study of talc and serpentine fo  
talc from the Johnson mine as "asbestos free."

Tab 2. Excerpts from a U.S. Geo  
Mr. Childster, which again reports on analyses o  
a purity not obtainable at other deposits." No ad

Tab 3. A scientific paper by Bos  
not of Public Health, which tested bulk samp

CUZZONE LAW OFFICES  
ATTORNEYS AT LAW  
108 MAPLE AVENUE  
BARRINGTON, RHODE ISLAND  
02806  
PHONE: 401-245-8500  
TELECOPIER: 401-245-8503

JOHN F. CUZZONE, JR.  
(1938 - 1985)

ELIZABETH A. CUZZONE  
MEMBER OF RI AND NY BARS

JILL M. CUZZONE  
OF COUNSEL  
MEMBER OF RI AND NY BARS

Dr. William Glassley  
Receiving #612 W. G  
7002 East Avenue, Trailer 4128  
Livermore, CA 94530

Re: James K. Martin, Sr. vs. Magnesium

Dear Bill:

I hope that this letter finds you well. Enclosed  
for your review.

1) Affidavit of William H. Ashton, former  
Johnson;

2) Exhibits A through H.

Please call me once you have had an opportuni

Very truly  
Elizabeth

EAC:lud  
Enclosures

Cuzzone Law Offices  
Attorneys at Law  
108 Maple Avenue  
Barrington, RI 02806  
Phone: 401-245-8500  
Fax: 245-8503

To: Bill Glassley From: Elizabeth A. Cuzzone, Esq.

Fax: 401-245-8503 Date: June 11, 2004

Phone: 401-245-8500 Pages: 5 including cover

Re: Eastern Magnesia Talc Co: 401-245-8503

Urgent For review Please comment Please reply Please recycle

\*Comments:

Important Please Read

The information contained in this Facsimile message is intended only for the personal and confidential use of the designated recipient named above. This message may be subject to attorney-client privilege and/or other applicable laws. If the sender of this message is not the intended recipient or is not aware of the intended recipient, you are hereby notified that you have received this message in error, and that you should not disseminate, distribute or copy of this message is strictly prohibited. If you have received this communication in error, please notify the sender immediately at 401-245-8503 and return the original to us by mail. Thank you.

DEFENDANT'S  
EXHIBIT NO. 2  
FOR IDENTIFICATION  
DATE: 5/17/18

What did Dr. Glassley find when he examined the ore from the Johnson mine?

Case 2:15-cv-01764-ERM-AMK Document 211-29 Filed 05/17/16 Page 67 of 130 PageID  
31107



**“I would have said [that] serpentine and talc from the Johnson Vermont Talc Mine contains asbestiform chrysotile.”**

Glassley Dep. 77:19–78:6



# What report did Dr. Glassley issue in the *Martin* case?

**SUMMARY OF ACTIVITIES RELATED TO SERVICES  
RENDERED FOR DECOF & GRIMM IN THE CASE OF DAVID H.  
WESTFALL vs. WHITTAKER, CLARK & DANIELS, ET AL.**

**SAMPLE COLLECTION**

On November 7 (Sunday), 1982, I drove to the Johnson Talc mine from Middlebury, Vermont. I collected a suite of samples of talc ore, talc-carbonate gneiss, serpentinite, "blackwall" and schist from a large mine tailings dump adjacent to the mining operation, the area around the truck loading chute and from the road side adjacent to hauling access to the mine property. From the association of minerals present with talc ore, the fresh nature of the samples, the angular and blocky form, the proximity to the loading site for mined ore, and the obvious size difference from these blocks and the surrounding cobbles and pebbles, it was evident the samples represented material obtained during the mining operation.

Also in the vicinity, beyond Eastern Magnesia Mill #4, on a public dirt road there was a region in which large areas of presumed talc ore covered by yellow tarpaulins was distributed. Mixed in with the presumed ore was serpentinite and schist and, by visual estimation, schist was much more significantly abundant than serpentinite. The characteristics of the schist made it clear it was part of the local "Stowe Formation" greenstone, with lesser amounts of "Stowe Formation" graphitic dark schist.

1 of 16

BASF-FC 0001611



# Fraud Continued After BASF Was in Control



# Was the Glassley evidence released when the partial truth came out in *Paduano*?

BASF FC 0001504	Motion in pending litigation.				
BASF FC 0001513	Letter re: draft of memorandum and affidavit in support of motion in pending litigation.	Howard G. Sloane, Esq.	Peter L. Kennedy, Esq., Arthur A. Dornbusch, II, Esq.	2/1/1983	Work Product/Attorney Client Privilege
BASF FC 0001514- BASF FC 0001522	Draft of Memorandum of Law in Support stipulation in pending litigation.	_____	_____	2/1/1983	Work Product
BASF FC 0001531- BASF FC 0001534	Draft of Affidavit in pending litigation.	_____	_____	2/1/1983	Work Product
BASF FC 0001536- BASF FC 0001545	Draft of Memorandum of Law in Support of Motion in pending litigation.	_____	_____	1/31/1983	Work Product
BASF FC 0001546- BASF FC 0001557	Draft of Stipulation in pending litigation.	_____	_____		Work Product
BASF FC 0001562	Memorandum re: Engelhard Tales	A.A. Dornbusch, Esq., T. Halket, Esq.	D.R. Hyde, Esq.	10/27/1982	Work Product/Attorney Client Privilege
BASF FC 0001611- BASF FC 0001626	Summary of Activities Related to Services Rendered	_____	_____	undated	Work Product
BASF FC 0001712- BASF FC 0001744	Draft Discovery Responses	_____	_____	3/20/1991	Work Product
BASF FC 0001745- BASF FC 0001758	Draft Discovery Responses	_____	_____	5/28/1986	Work Product
BASF FC 0002635- BASF FC 0002719	Letter and enclosures re: corporate documents for pending litigation.	Arthur A. Dornbusch, II, Esq.	T. Richards	11/19/1982	Work Product/Attorney Client Privilege



Was the Glassley evidence released when the partial truth came out in *Paduano*?

Case 2:11-cv-00754-RSM-AMC Document 2-1 Filed 03/17/13 Page 110 of 130 PageID  
31111

## Paduano Privilege Log

BASF FC 0001611- BASF FC 0001626	Summary of Activities Related to Services Rendered			undated	Work Product
-------------------------------------	--	--	--	---------	--------------

### SUMMARY OF ACTIVITIES RELATED TO SERVICES RENDERED FOR DECOF & GRIMM IN THE CASE OF DAVID H. WESTFALL VS. WHITTAKER, CLARK & DANIELS, ET AL.

#### SAMPLE COLLECTION

On November 7 (Sunday), 1982, I drove to the Johnson Talc mine from Middlebury, Vermont. I collected a suite of samples of talc ore, talc-carbonate grit, serpentine,

"blackwall" and schist from a large mine tailings dump adjacent to the mining operation, the area around the truck-loading chute and from the road side adjacent to hauling access to the mine property. From the association of minerals present with talc ore, the fresh nature of the samples, the angular and blocky form, the proximity to the loading site for mined ore, and the obvious size difference from these blocks and the surrounding cobble and pebbles, it was evident the samples represented material obtained during the mining operation.

Also in the vicinity, beyond Eastern Magnesia Mill #4, on a public dirt road there was a region in which large areas of presumed talc ore covered by yellow talcquartz was distributed. Mixed in with the presumed ore was serpentine and schist and, by visual definition, schist was much more significantly abundant than serpentine. The characteristics of the schist made it clear it was part of the local "Stowe Formation" gneiss, with lesser amounts of "Stowe Formation" amphibole dark schist.

1 of 16

BASF FC 0001611

BASF FC 0001611

# Engelhard & BASF Knowledge



# Did Engelhard know about the lies and demands for dismissals?

**“I must insist on a response to our request for a dismissal based on the Ashton Affidavit and materials.”**

**“[P]laintiffs' counsel in Pennsylvania voluntarily dismissed EmTal from the Pennsylvania litigation. The same result has been obtained in the tireworker litigation in Kansas. On January 16, 1990 plaintiffs' counsel filed a notice voluntarily dismissing a number of defendants, including EmTal. Plaintiffs' counsel in Kansas also had been provided with the Ashton materials. A copy of this notice of dismissal is attached.”**

**1990**

**CC Peter Sloane & Lester Fliegel  
(Engelhard in-house legal)**

CARILL GORDON & REINDEL  
A PROFESSIONAL CORPORATION  
1900 K STREET, N.W.  
WASHINGTON, D.C. 20006  
TELEPHONE 800-690-6900

EIGHTY FINE STREET  
NEW YORK, N.Y. 10008

10 RUE FRANÇOIS 1<sup>er</sup>  
75008 PARIS, FRANCE

WRITERS' DIRECTORIAL BUREAU  
(202) 862-8954

March 2, 1990

Re: Ohio Tireworker Lit

Dear Mr. Brodhead:

I write as national counsel for Company ("EmTal"), a defendant in tireworker litigation. After reviewing these materials, and having plaintiffs' expert, Dr. Art Nohl, review them as well, plaintiffs' counsel in Pennsylvania voluntarily dismissed EmTal from the Pennsylvania litigation. The same result has been obtained in the tireworker litigation in Kansas. On January 16, 1990 plaintiffs' counsel filed a notice voluntarily dismissing a number of defendants, including EmTal. Plaintiffs' counsel in Kansas also had been provided with the Ashton materials. A copy of this notice of dismissal is attached.

By letter dated October 2, 1989, counsel, Jack Kluznick, of Weston Hurd & Associates, sent to you, in support of our request for a dismissal based on the Ashton Affidavit and materials. The stays in effect in this litigation with the opportunity to review these materials and your decision.

It is now five months since you have not responded to our request. I must insist on a response to our request for a dismissal based on the Ashton Affidavit and materials. The stays in effect in this litigation with the opportunity to review these materials and your decision.

CARILL GORDON & REINDEL

-2-

I urge that you give your fullest consideration to these materials, as plaintiffs' counsel in the Pennsylvania tireworker litigation did. After reviewing these materials, and having plaintiffs' expert, Dr. Art Nohl, review them as well, plaintiffs' counsel in Pennsylvania voluntarily dismissed EmTal from the Pennsylvania litigation. The same result has been obtained in the tireworker litigation in Kansas. On January 16, 1990 plaintiffs' counsel filed a notice voluntarily dismissing a number of defendants, including EmTal. Plaintiffs' counsel in Kansas also had been provided with the Ashton materials. A copy of this notice of dismissal is attached.

Please call me if you have any questions. I have already had these materials for five months. You contact me with your response no later than March 15, 1990.

Sincerely,  
Eric

Peter J. Brodhead, Esq.  
Spangenberg, Shibley, Traci & Lancione  
1500 National City Bank Bldg.  
Cleveland, Ohio 44114-3062

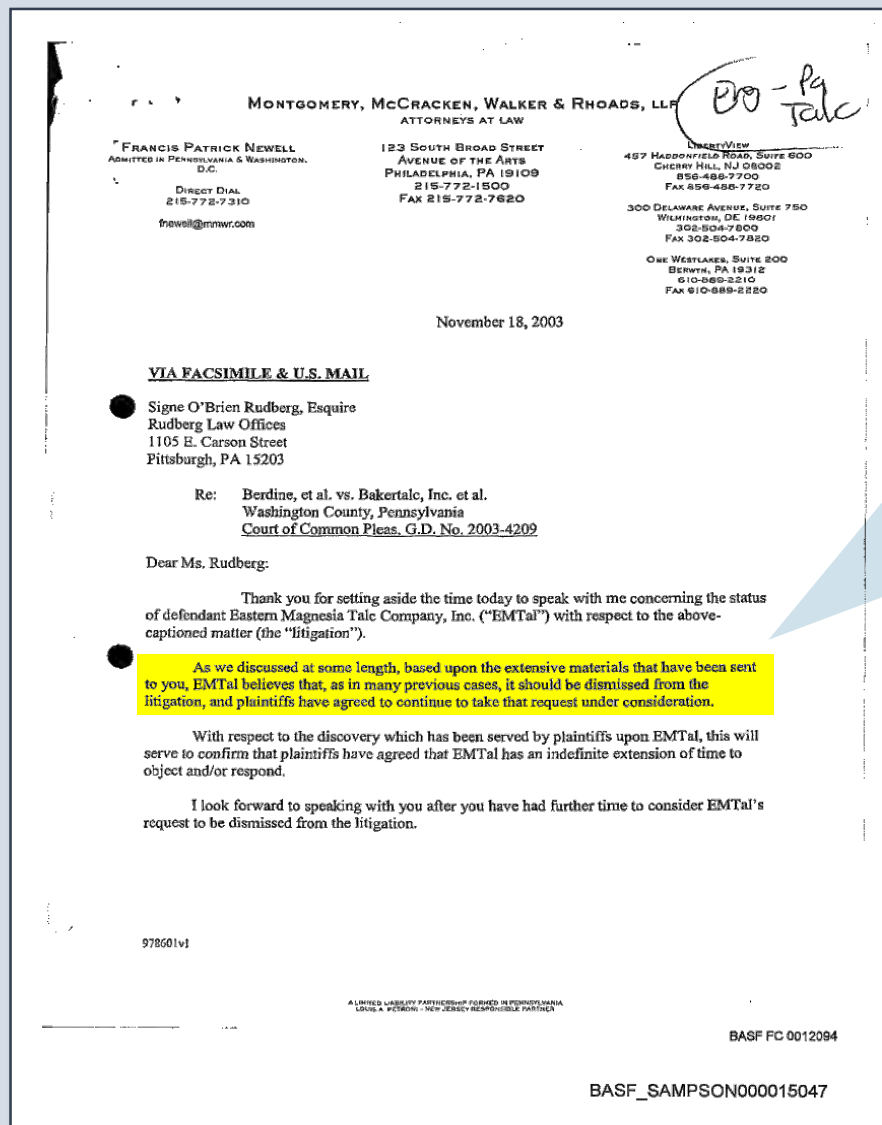
[Attachments]

cc: Howard G. Sloane, Esq.  
Lester Fliegel, Esq.

VIA FEDERAL EXPRESS



# Did Engelhard know about the lies and demands for dismissals?



**"As we discussed at some length, based upon the extensive materials that have been sent to you, EMTal believes that, as in many previous cases, it should be dismissed from the litigation, and plaintiffs have agreed to continue to take that request under consideration."**

**CC Peter Sloane & Michael Hassett  
(Engelhard in-house legal)**

# Did Engelhard Executives Certify False Discovery Responses?

## AFFIDAVIT

STATE OF NEW JERSEY )  
COUNTY OF MIDDLESEX ) ss.:  
Charles D. Carter, being

says:

1. I am the Director of  
of Engelhard Corporation ("Engelhard")  
with its principal place of business

2. In 1967 a talc mine  
was acquired, owned and operated by  
wholly-owned Engelhard subsidiary  
pany, which had its principal place of  
Vermont. Other than this one talc mine,  
neither Engelhard nor any of its  
corporations ever owned or operated

3. As previously indicated,  
Charles D. Carter, sworn and subscribed to  
Engelhard does not currently possess  
produced by this mine. In addition,  
currently possess any testing data of  
you by way of the Ashton Affidavit  
Pooley.

-2-

4. I know the foregoing from my own personal knowledge and from a search of corporate records and if called as a witness I could and would competently testify thereto, under oath.

5. I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed on August 18, 1989 at Menlo Park, New Jersey.

*Charles D. Carter*  
Charles D. Carter

Sworn to before me this  
18th day of August 1989

*Laurie A. DeLa*  
Notary Public

LAURIE A. DELA  
A Notary Public of New Jersey  
My Commission Expires November 7, 1990

**"Engelhard does not currently possess any testing data other than the data provided to you by way of the Ashton Affidavit and the report of Dr. Pooley."**

**"I know the foregoing from my own personal knowledge and from a search of corporate records..."**

## Charles Carter





Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 107 of 130 PageID:  
31117

# Was Engelhard Involved In Providing Fraudulent Discovery Responses?

SUPREME COURT OF THE STATE OF NEW YORK  
ALL COUNTIES WITHIN NEW YORK CITY

In re: NEW YORK CITY ASBESTOS LITIGATION :  
-----X

ESTATE OF STEVEN CHERNICK and ROSANNE  
CHERNICK, :  
-----X

Plaintiffs, :

-against- :

ABB LUMMUS GLOBAL, INC., et al., :

Defendants. :  
-----X

## RESPONSES BY ENGELHARD CORPORATE STANDARD SET OF LIABILITY IN

Defendant Engelhard Corporation ("Engelhard Minerals and Chemical Corporation") heretofore  
Standard Set of Liability Interrogatories ("Standard Set of Liability Interrogatories")  
Steven and Rosanne Chernick:

### GENERAL OBJECTIO

1. Engelhard objects to the Standard Set of Liability Interrogatories as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome.
2. Engelhard objects to the Standard Set of Liability Interrogatories as ambiguous and unintelligible.
3. Engelhard objects to the Standard Set of Liability Interrogatories as information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection.

work product doctrine, or any other applicable privilege or protection.

4. Engelhard objects to the Standard Set to the extent that it purports to require Engelhard to conduct discovery against third parties or attempts to require it to seek and furnish information from, and to reply on behalf of, persons or corporations over whom Engelhard exercises no control or on whose behalf Engelhard has no actual or apparent authority to respond. This requirement is unduly burdensome, the information is equally available to plaintiffs under the New York Civil Practice Law and Rules, and Engelhard's compliance is not required by law. ....

5. Engelhard's trial preparation and factual investigation are on-going. Accordingly, Engelhard's Responses to the Standard Set are based solely on information known to it at the time of the service of these Responses. Engelhard reserves the right, therefore, to make reference at trial, or in any other hearings in this action, to facts and/or documents not identified in these Responses, the existence or relevance of which is subsequently discovered by Engelhard or its counsel.

### LIABILITY INTERROGATORIES AND RESPONSES

#### Interrogatory No. 1:

State the full name, address, telephone number and position of the corporate officer answering these Interrogatories.

#### Response to Interrogatory No. 1:

Michael J. Hassett, Esq., Associate General Counsel for Engelhard Corporation, 101 Wood Avenue, Iselin, New Jersey 08830-0770, (732) 205-5000, coordinated Engelhard's Responses to the Standard Set.

#### Interrogatory No. 1:

State the full name, address, telephone number and position of the corporate officer answering these Interrogatories.

#### Response to Interrogatory No. 1:

Michael J. Hassett, Esq., Associate General Counsel for Engelhard

Corporation, 101 Wood Avenue, Iselin, New Jersey 08830-0770, (732) 205-5000, coordinated Engelhard's Responses to the Standard Set.

**Michael Hassett**  
**Associate General Counsel**

2002

# Spoliation

# What Evidence is Still Missing?

**All original asbestos testing reports with 3 exceptions**

**Dr. Hemstock's & Dr. Oulton's Emtal files**

**All original Westfall depositions & majority of exhibits**

**All original scientific backup and testing data**

**Results from Engelhard's Study of the Johnson Mine**

**■ BASF**  
Crime-Fraud



What complete documents are available from **Hemstock's** Deposition?



Out of the 51 exhibits marked at Dr. Hemstock's Westfall deposition, BASF has been able to produce complete copies of **only ten (10) exhibits.**

5/23/10 Poole Dep. 98:15–100:5

# What evidence is missing from Hemstock's Westfall deposition?

I N D E X		PAGE NO.
DEPOSITION OF DR. GLENN HEMSTOCK		
Examination by Mr. Prentiss		4
E X H I B I T S		
NO.	(All exhibits were marked prior to commencement of deposition.)	
1	Inter-Department Memorandum dated October 9, 1972 from E. J. Triglia	
2	A document to the file from J. M. Zimmermann dated October 30, 1980	
3	A Technical Service Request from J. H. Shafer dated February 28, 1973	
4	A Technical Service Request from J. M. Zimmermann dated January 17, 1979	
5	Document entitled "Proposed Experimental Design for Fiber Distribution"	
6	A Technical Service Request from J. M. Zimmermann dated September 6, 1977	
7	A Technical Service Request from R. E. Lomas dated January 29, 1979	
8	Letter from Royal-Globe Insurance Co. to Mr. Victor A. Backels dated August 18, 1972	
9	Document entitled "Attachment v" from R. A. Nadkarni dated October 27, 1978	
10	Letter from Johns-Manville to Engelhard Minerals & Chemicals Division dated September 5, 1972	
11	Document entitled "Mineralogy, Identification, and Quantification of Airborne Talc Dust"	

E X H I B I T S (Continued)	
NO.	
12	Inter-Department Memorandum dated August 22, 1972 from J. H. Shafer
13	Inter-Department Memorandum dated September 18, 1971 from T.D. Cullen
14	Technical Service Request from J. H. Shafer dated March 30, 1979
15	Document entitled "History of Asbestos-Related Mineralogical Terminology"
16	Inter-Department Memorandum dated December 1, 1977 from C. Y. Haas
17	Technical Service Request from A. L. Yanko dated October 12, 1973
18	Document to A. L. Yanko dated May 31, 1979
19	Letter from Walter C. McCrone Assoc., Inc., dated June 27, 1977 to Mr. Frank J. Dzierzanowski
20	Inter-Department Memorandum dated August 18, 1977 from K. Newger
21	Technical Service Request from C. Y. Haas dated March 29, 1977
22	Letter from Walter C. McCrone Assoc., Inc. dated April 30, 1979 to Mr. Peter N. Gale
23	Document entitled "Talc Investigation" containing calculations
24	Document entitled "Petrographic Examination of Two Talcose Rock Samples from Northern Vermont"
25	Letter from the N.E.V. dated January 19, 1973 to Mr. A. J. Dandewerth
26	Letter from U.S. Dept. of Labor dated July 19, 1979 to Mr. J. Howard Shafer

E X H I B I T S (Continued)	
NO.	
27	Note from the desk of G.A. Hemstock dated September 1, 1972
28	Inter-Department Memorandum dated March 13, 1979 from J. M. Zimmermann
29	Purchase Requisition dated May 1, 1982 for Johns-Manville Research & Engineering Center
30	Letter from the Minerals & Chemical Division dated November 21, 1977 to Bobby F. Craft, Ph.D.
31	Conversation memo dated February 6, 1979
32	Pages of calculations dated January 19, 1977
33	Inter-Department Memorandum dated August 3, 1979 from R.E. Lomas
34	Calculations entitled "Waterbury Talc Study"
35	Technical Service Request from R.W. Wert dated June 24, 1982
36	Inter-Department Memorandum from E. J. Triglia dated May 22, 1979
37	Document entitled "Talc Morphology as Revealed by Scanning Electron Microscopy"
38	Note from the office of E. J. Triglia
39	Letter from Fred W. Tackwell dated November 10, 1977 to Mr. Frank J. Dzierzanowski
40	Inter-Department Memorandum dated April 20, 1978 from K. Newger
41	Technical Service Request dated March 11, 1982 from R. M. Kazimir
42	Letter from the Minerals & Chemicals Division dated October 2, 1980 to Mr. Mark Palenik

E X H I B I T S (Continued)	
NO.	
43	Document entitled "The Basic Mineralogical Dichotomy in the Selevan Epidemiology Study"
44	Inter-Department Memorandum dated September 26, 1977 from T. D. Cullen
45	Inter-Department Memorandum dated July 17, 1979 from E. J. Triglia
46	Group of documents, first page of which is a list of figures
47	Document entitled "VAC Core Samples"
48	Technical Service Request dated July 27, 1982 from K. L. Kayler
49	Documents contained on pocket of binder
50	Documents contained in binder
51	Letter from Minerals & Chemical Division dated June 13, 1979 to Mr. John Brown
*****	

26 out of 51 (51%)

# What evidence is missing from Dr. Hemstock's *Westfall* deposition?

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">INDEX</p> <p>DEPOSITION OF DR. GLENN HEMSTOCK Examination by Mr. Prentiss</p> <p style="text-align: right;">PAGE NO. 4</p> <p style="text-align: center;">EXHIBITS</p> <p>(All exhibits were marked prior to commencement of deposition.)</p> <p>1 Inter-Department Memorandum dated October 9, 1972 from E. J. Triglia</p> <p>2 A document to the file from J. M. Zimmermann dated October 30, 1979</p> <p>3 A Technical Service Request from J. H. Shafer dated February 28, 1973</p> <p>4 A Technical Service Request from J. M. Zimmermann dated January 17, 1979</p> <p>5 Document entitled "Proposed Experimental Design for Fiber Distribution"</p> <p>6 A Technical Service Request from J. M. Zimmermann dated September 6, 1977</p> <p>7 A Technical Service Request from R. E. Lomas dated January 29, 1979</p> <p>8 Letter from Royal-Globe Insurance Co. to Mr. Victor A. Backels dated August 18, 1972</p> <p>9 Document entitled "Attachment V" from R. A. Madkari dated October 27, 1978</p> <p>10 Letter from Johns-Manville to Engelhard Minerals &amp; Chemicals Division dated September 5, 1972</p> <p>11 Document entitled "Mineralogy, Identification, and Quantification of Airborne Talc Dust"</p> <p>PADUANO BASF02293 BASF_SAMPSON000014464</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">EXHIBITS (Continued)</p> <p>12 Inter-Department Memorandum dated August 22, 1972 from J. H. Shafer</p> <p>13 Inter-Department Memorandum dated September 16, 1971 from T.D. Oulton</p> <p>14 Technical Service Request from J. H. Shafer dated March 30, 1979</p> <p>15 Document entitled "History of Asbestos-Related Mineralogical Terminology"</p> <p>16 Inter-Department Memorandum dated December 1, 1977 from C. Y. Haas</p> <p>17 Technical Service Request from A. L. Hunko dated October 12, 1973</p> <p>18 Document to A. L. Hunko dated May 31, 1979</p> <p>19 Letter from Walter C. McCrone Assoc., Inc., dated June 27, 1977 to Mr. Frank J. Dzierzanowski</p> <p>20 Inter-Department Memorandum dated August 18, 1977 from K. Newger</p> <p>21 Technical Service Request from C. Y. Haas dated March 29, 1977</p> <p>22 Letter from Walter C. McCrone Assoc., Inc. dated April 30, 1979 to Mr. Peter N. Gale</p> <p>23 Document entitled "Talc Investigation" containing calculations</p> <p>24 Document entitled "Petrographic Examination of Two Talcose Rock Samples from Northern Vermont"</p> <p>25 Letter from the H.E.W. dated January 19, 1973 to Mr. A. J. Dankwerth</p> <p>26 Letter from U.S. Dept. of Labor dated July 19, 1979 to Mr. J. Howard Shafer</p> <p>PADUANO BASF02294 BASF_SAMPSON000014465</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">EXHIBITS (Continued)</p> <p>27 Note from the desk of G.A. Hemstock dated September 1, 1972</p> <p>28 Inter-Department Memorandum dated March 13, 1979 from J. M. Zimmermann</p> <p>29 Purchase Requisition dated May 1, 1973 for Johns-Manville Research &amp; Engineering Center</p> <p>30 Letter from the Minerals &amp; Chemical Division dated November 21, 1977 to Bobby F. Craft, Ph.D.</p> <p>31 Conversation memo dated February 6, 1979</p> <p>32 Pages of calculations dated January 19, 1977</p> <p>33 Inter-Department Memorandum dated August 3, 1979 from R.E. Lomas</p> <p>34 Calculations entitled "Waterbury Talc Study"</p> <p>35 Technical Service Request from R.W. Wert dated June 24, 1982</p> <p>36 Inter-Department Memorandum from E. J. Triglia dated May 22, 1979</p> <p>37 Document entitled "Talc Morphology as Revealed by Scanning Electron Microscopy"</p> <p>38 Note from the office of E. J. Triglia</p> <p>39 Letter from Fred W. Farwell dated November 10, 1977 to Mr. Frank J. Dzierzanowski</p> <p>40 Inter-Department Memorandum dated April 20, 1978 from K. Newger</p> <p>41 Technical Service Request dated March 11, 1982 from R. M. Kazimir</p> <p>42 Letter from the Minerals &amp; Chemicals Division dated October 2, 1980 to Mr. Mark Palenik</p> <p>PADUANO BASF02295 BASF_SAMPSON000014466</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">EXHIBITS (Continued)</p> <p>43 Document entitled "The Basic Mineralogical Dichotomy in the Selevan Epidemiology Study"</p> <p>44 Inter-Department Memorandum dated September 26, 1977 from T. D. Oulton</p> <p>45 Inter-Department Memorandum dated July 17, 1979 from E. J. Triglia</p> <p>46 Group of documents, first page of which is a list of figures</p> <p>47 Document entitled "VAG Core Samples"</p> <p>48 Technical Service Request dated July 27, 1982 from K. L. Kayler</p> <p>49 Documents contained on pocket of binder</p> <p>50 Documents contained in binder</p> <p>51 Letter from Minerals &amp; Chemical Division dated June 13, 1979 to Mr. John Brown</p> <p style="text-align: center;">*****</p> <p>PADUANO BASF02296 BASF_SAMPSON000014467</p>
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Steinmetz

26 out of 51 (51%)



Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 113 of 130 PageID: 31123

# What evidence is missing from Triglia's *Westfall* Deposition?

INDEX			
WITNESS		DIRECT	CROSS REDIRECT
EMIL J. TRIGLIA			
By Mr. Prentiss		3	
By Mr. Leibensperger			98
By Mr. Curran			106
By Mr. Sarli			107
By Mr. Prentiss			113
EXHIBITS			
ITEM	DESCRIPTION	IDENTIFICATION	
P-1	The subpoena	4	
P-2	A document bearing the signature of Mr. Triglia	6	
P-3	A TSR dated February 28, 1973	27	
P-3A	A memorandum dating from the office of E.J. Triglia	30	
P-4	Pages from the TSR of P-3A	32	
P-5	A TSR with the date of April 10, 1977	34	
P-6	A letter from Walter McCrone Associates	38	
P-7	A letter from R.A. Nadkarni to Dennis L. Caputo dated 10-27-78	43	
P-8	A memorandum dated 2-6-79	45	
P-9	The Occupational Health Branch of Ministry of Labour letter dated December 12, 1978	47	
P-10	A TSR letter from Mr. Lomas	49	
P-11	A letter on Elanation letterhead to Mr. Braker dated 2-12-79	50	
P-12	Memorandum dated 2-19-79 from Mr. Hall	54	
P-13	Page to Mr. Yunko from Mr. Hemstock dated 4-1-79	56	

EXHIBITS		
ITEM	DESCRIPTION	IDENTIFICATION
P-14	A memorandum to Mr. Yunko from Mr. Zimmerman dated 3-13-79	56
P-15	A memorandum from Peter Gale to R.E. Lomas dated 3-14-79	58
P-16	A memorandum from Peter Gale to several individuals dated 3-20-79	59
P-17	A memorandum to Mr. Hemstock from Mr. Lomas dated 3-16-79	60
P-18	The Engelhard Minerals and Chemicals Calculation	61
P-19	The Engelhard Minerals and Chemicals Calculation consisting of 21 pages	63
P-20	Engelhard Minerals and Chemicals Calculation flow sheet	65
P-21	A memorandum to Mr. Hemstock and Mr. Yunko from Mr. Triglia dated 3-23-79	76
P-22	A memorandum to Mr. Gale from Mr. Ojala dated 3-25-79	74
P-23	Engelhard Minerals and Chemicals Division letter to John Brown from Peter Gale dated 3-21-79	77
P-24	A memorandum from Mr. Gale to Mr. Triglia and other individuals dated 4-6-79	79
P-25	A memorandum from Peter Gale to Mr. Triglia dated April 11, 1979	79
P-26	An interdepartmental memorandum from Mr. Gale to several individuals dated April 9, 1979	82
P-27	A letter on Walter C. McCrone letterhead to Mr. Gale dated April 30, 1979	83

EXHIBITS		
ITEM	DESCRIPTION	IDENTIFICATION
P-28	A talc investigation -- Engelhard Minerals and Chemicals Calculation	84
P-29	A memorandum from Mr. Triglia to Mr. Hemstock dated May 22, 1979	85
P-30	A memorandum dated 5-13-79 to Mr. Triglia's handwriting to John Brown	87
P-31	A memorandum to Mr. Hemstock from Mr. Triglia dated July 17, 1979	89

19 of 31 Exhibits (61%) missing

# What evidence is missing from Mr. Triglia's *Westfall* deposition?

INDEX			
WITNESS		DIRECT CROSS REDIRECT	
EMIL J. TRIGLIA		3	
By Mr. Prentiss		98	
By Mr. Leibensperger		106	
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P-10	A TSR letter from Mr. Lomas	49	
P-11	A letter on Firestone letterhead to Mr. Brewer dated 2-12-79	50	
P-12	Memorandum dated 2-19-79 from Mr. Hall	51	
P-13	Memo to Mr. Yunko from Mr. Hamstock dated 4-1-79	51	

WILLIAM C. O'BRIEN ASSOCIATES  
OFFICIALS - GENERAL - CERTIFIED SHORTHAND REPORTING  
NEWARK, N. J.

BASF\_SAMPSON000033341

EXHIBITS		
ITEM	DESCRIPTION	IDENTIFICATION
P-14	A memorandum to Mr. Yunko from Mr. Zimmerman dated 3-13-79	56
P-15	A memorandum from Peter Gale to R.E. Lomas dated 3-14-79	58
P-16	A memorandum from Peter Gale to several individuals dated 3-20-79	59
P-17	A memorandum to Mr. Hamstock from Mr. Lomas dated 3-16-79	60
P-18	The Engelhard Minerals and Chemicals Calculation	61
P-19	The Engelhard Minerals and Chemicals Calculation consisting of 21 pages	63
P-20	Engelhard Minerals and Chemicals Calculation flow sheet	65
P-21	A memorandum to Mr. Hamstock and Mr. Yunko from Mr. Triglia dated 3-23-79	74
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P-23	Engelhard Minerals and Chemicals Division letter to John Brown from Peter Gale dated 3-21-79	77
P-24	A memorandum from Mr. Gale to Mr. Triglia and other individuals dated 4-4-79	79
P-25	A memorandum from Peter Gale to Mr. Triglia dated April 11, 1979	79
P-26	An interdepartmental memorandum from Mr. Gale to several individuals dated April 9, 1979	82
P-27	A letter on Walter C. McCrone letterhead to Mr. Gale dated April 30, 1979	83

WILLIAM C. O'BRIEN ASSOCIATES  
OFFICIALS - GENERAL - CERTIFIED SHORTHAND REPORTING  
NEWARK, N. J.

BASF\_SAMPSON000033342

EXHIBITS		
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WILLIAM C. O'BRIEN ASSOCIATES  
OFFICIALS - GENERAL - CERTIFIED SHORTHAND REPORTING  
NEWARK, N. J.

BASF\_SAMPSON000033343

19 out of 31 (61%)

Steinmetz

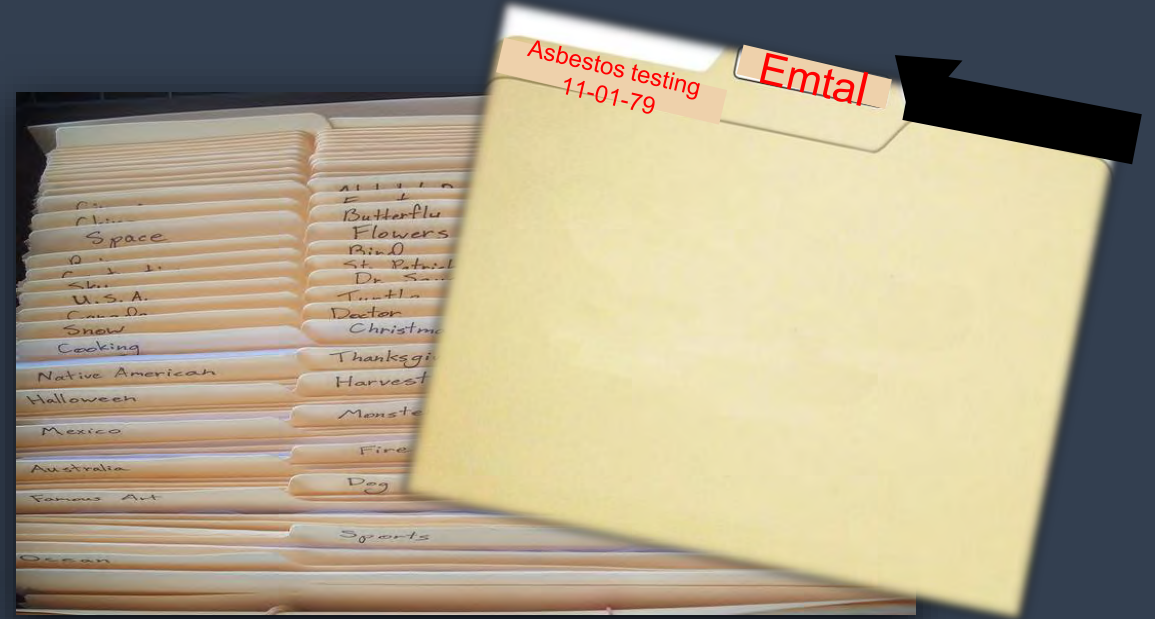
# What evidence is missing from Mr. Gale's *Westfall* deposition?

GALE EXHIBIT NUMBER	PREVIOUSLY MARKED AS EXHIBIT	DESCRIPTION
Gale Exhibit 15	Triglia Exhibit 15	A memorandum from Peter Gale to R.E. Lomas dated 3-14-79
Gale Exhibit 16	Triglia Exhibit 16	A memorandum from Peter Gale to several individuals dated 3-20-79
Gale Exhibit 17	Triglia Exhibit 17	A memorandum to Mr. Hemstock from Mr. Lomas dated 3-16-79
Gale Exhibit 18	Triglia Exhibit 18	The Engelhard Minerals and Chemicals Calculation
Gale Exhibit 19	Triglia Exhibit 19	The Engelhard Minerals and Chemicals Calculation consisting of 21 pages
Gale Exhibit 20	Hemstock Exhibit 50	Engelhard Minerals and Chemicals Calculation flow sheet
Gale Exhibit 23	Triglia Exhibit 23; Hemstock Exhibit 50	Engelhard Minerals and Chemicals Division letter to John Brown from Peter Gale dated 3-21-79
Gale Exhibit 24	Triglia Exhibit 24	A memorandum from Mr. Gale to Mr. Triglia and other individuals dated 4-4-79
Gale Exhibit 25	Triglia Exhibit 25	A memorandum from Peter Gale to Mr. Triglia dated 4-11-79
Gale Exhibit 26	Triglia Exhibit 26	An interdepartmental memorandum from Mr. Gale to several individuals dated 4-9-79
Gale Exhibit 27	Triglia Exhibit 27	A letter on Walter C. McCrone letterhead to Mr. Gale dated 4-30-79
Gale Exhibit 28	Hemstock Exhibit 23; Triglia Exhibit 28	A talc investigation – Engelhard Minerals and Chemicals Calculation
Gale Exhibit 29	Hemstock Exhibit 36; Triglia Exhibit 29	A memorandum from Mr. Triglia to Mr. Hemstock dated 5-22-79
Gale Exhibit 31	Hemstock Exhibit 45; Triglia Exhibit 31	A memorandum to Mr. Hemstock from Mr. Triglia dated 7-17-79
Gale Exhibit 50	Hemstock Exhibit 50	Copies of Publications, raw data and reports contained in a binder

**11 out of 15 (73%)**



# What happened to Dr. Hemstock's Chrono file?

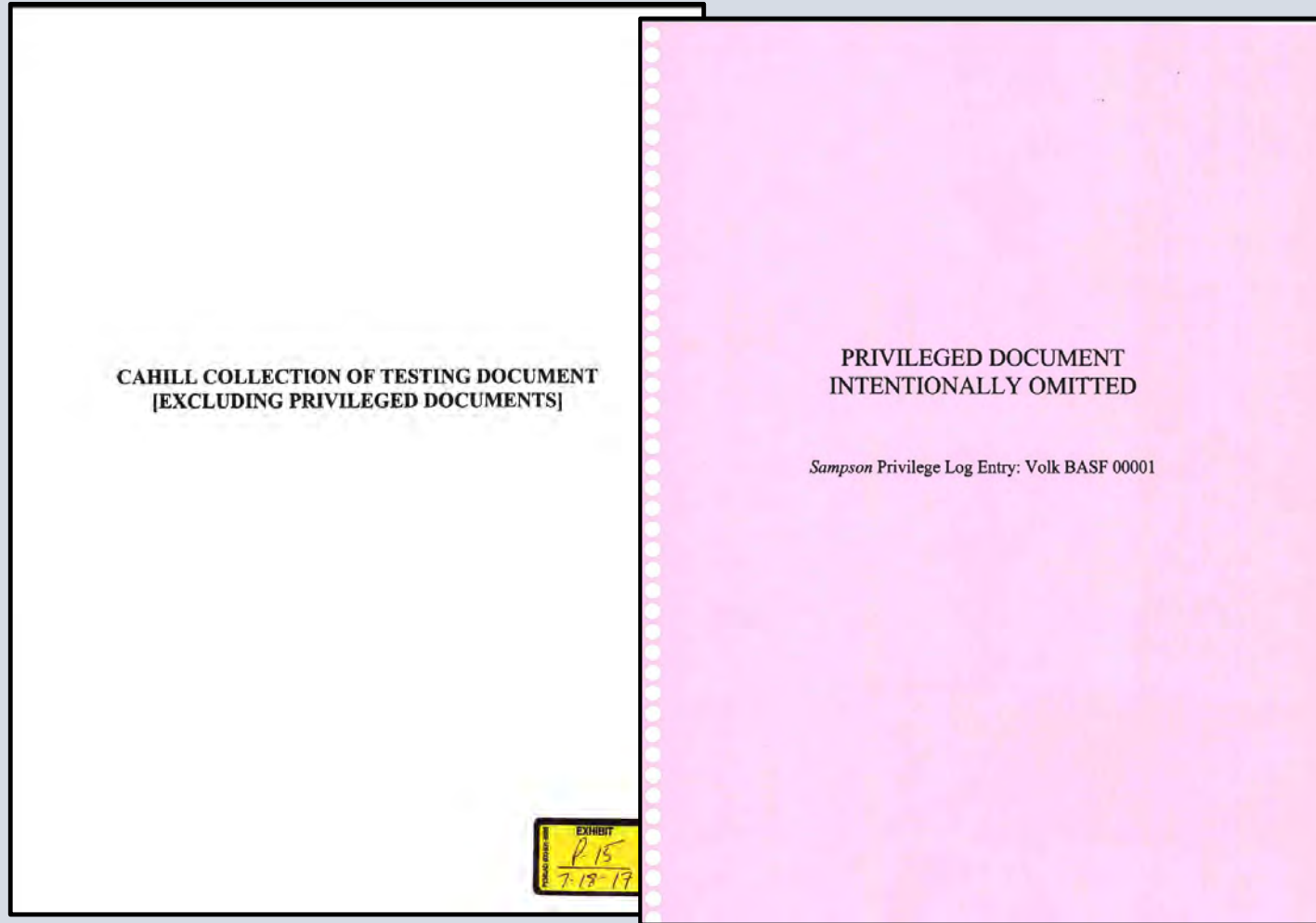


5/9/12 Hemstock Dep. 49:3–52:12

# Documents Justice Rivera Soto Should Examine




# The Documents Withheld from the Cahill Compilation (Ex. 3)




**“According to BASF the compilation contains additional documents that BASF continues to withhold under a claim of privilege.”**



SUPERIOR COURT OF NEW JERSEY	
CHAMBERS OF ANA C. VISCOMI, J.S.C. JUDGE	 MIDDLESEX COUNTY COURT HOUSE P.O. BOX 964 New Brunswick, New Jersey 08903-0964
AUDREY SAMPSON, individually and as Executrix of the Estate of John Sampson  <i>Plaintiffs,</i>  v.  3M COMPANY, f/k/a Minnesota Mining & Manufacturing Company; ASBESTOS CORPORATION LTD., in itself and as successor to Johnson's Company; BASF CATALYSTS LLC., individually and as Successor to Engelhard Minerals and Chemical Corp.; BELL ASBESTOS MINES LTD; BENJAMIN MOORE PAINT COMPANY; CARBOLA CHEMICAL COMPANY; CERTAINTED CORPORATION; CSR LIMITED, individually as successor to Colonial Sugar & Refinery Company; DANA COMPANIES, LLC., f/k/a Dana Corporation; DAP PRODUCTS, INC.; EASTERN MAGNESIA TALC COMPANY; E.I. DuPONT de NEMOURS; GEORGIA PACIFIC CORPORATION; GOUVERNEUR TALC COMPANY INC.; INTERNATIONAL PAPER COMPANY, Individually and as successor to Strathmore Paper Co.; INTERNATIONAL TALC COMPANY; KAISER GYPSUM CORPORATION; KELLY-MOORE PAINT COMPANY; KENTILE FLOORS INC.; OWENS-ILLINOIS, INC.; METROPOLITAN LIFE INSURANCE CO.; R.T. VANDERBILT COMPANY, INC.; RAPID AMERICAN CORPORATION, in itself and successor to Philip Carey Manufacturing Company, Carey Canadian Mines, Ltd and Quebec Asbestos Corporation Ltd.;	SUPERIOR COURT OF NEW JERSEY LAW DIVISION:MIDDLESEX COUNTY DOCKET NO. MID-L-5384-11AS  Civil Action  <b>ORDER</b>   <b>FILED</b> JUL -7 2017 ANA C. VISCOMI, J.S.C.

The full evidentiary record developed in the *Sampson* matter, should be received and considered.

All Depositions Taken in *Sampson*

<p><b>SUPERIOR COURT OF NEW JERSEY</b></p>	
<p>CHAMBERS OF <b>ANA C. VISCOMI, J.S.C.</b> JUDGE</p>	<p style="text-align: center;"></p> <p>MIDDLESEX COUNTY COURT HOUSE P.O. BOX 964 New Brunswick, New Jersey 08903-0964</p>
<p><b>AUDREY SAMPSON</b>, individually and as Executrix of the Estate of John Sampson</p>	
<p><i>Plaintiffs,</i></p>	
<p>v.</p>	
<p><b>3M COMPANY</b>, f/k/a Minnesota Mining &amp; Manufacturing Company; <b>ASBESTOS CORPORATION LTD.</b>, in itself and as successor to Johnson's Company; <b>BASF CATALYSTS LLC.</b>, individually and as Successor to Engelhard Minerals and Chemical Corp.; <b>BELL ASBESTOS MINES LTD.</b>; <b>BENJAMIN MOORE PAINT COMPANY</b>; <b>CARBOLA CHEMICAL COMPANY</b>; <b>CERTAINTED CORPORATION</b>; <b>CSR LIMITED</b>, individually as successor to Colonial Sugar &amp; Refinery Company; <b>DANA COMPANIES, LLC.</b>, f/k/a Dana Corporation; <b>DAP PRODUCTS, INC.</b>; <b>EASTERN MAGNESIA TALC COMPANY</b>; <b>E.I. DuPONT de NEMOURS</b>; <b>GEORGIA PACIFIC CORPORATION</b>; <b>GOUVERNEUR TALC COMPANY INC.</b>; <b>INTERNATIONAL PAPER COMPANY</b>, Individually and as successor to Strathmore Paper Co.; <b>INTERNATIONAL TALC COMPANY</b>; <b>KAISER GYPSUM CORPORATION</b>; <b>KELLY-MOORE PAINT COMPANY</b>; <b>KENTILE FLOORS INC.</b>; <b>OWENS-ILLINOIS, INC.</b>; <b>METROPOLITAN LIFE INSURANCE CO.</b>; <b>R.T. VANDERBILT COMPANY, INC.</b>; <b>RAPID AMERICAN CORPORATION</b>, in itself and successor to Philip Carey Manufacturing Company, Carey Canadian Mines, Ltd and Quebec Asbestos Corporation Ltd.;</p>	
<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO. MID-L-5384-11AS</p>	
<p>Civil Action</p>	
<p><b>ORDER</b></p>	
<p><b>FILED</b></p>	
<p>JUL -7 2017</p>	
<p>ANA C. VISCOMI, J.S.C.</p>	

**“[Plaintiffs] also respectfully submit that the Court should be provided with all of the transcripts and documents produced or developed before Justice Stein in *Sampson*”**

## All Documents Related to Creation and Distribution of Ashton Affidavit

**AFFIDAVIT**

STATE OF NEW JERSEY )  
COUNTY OF SOMERSET ) ss.:

WILLIAM H. ASHTON, being duly sworn, deposes and says:

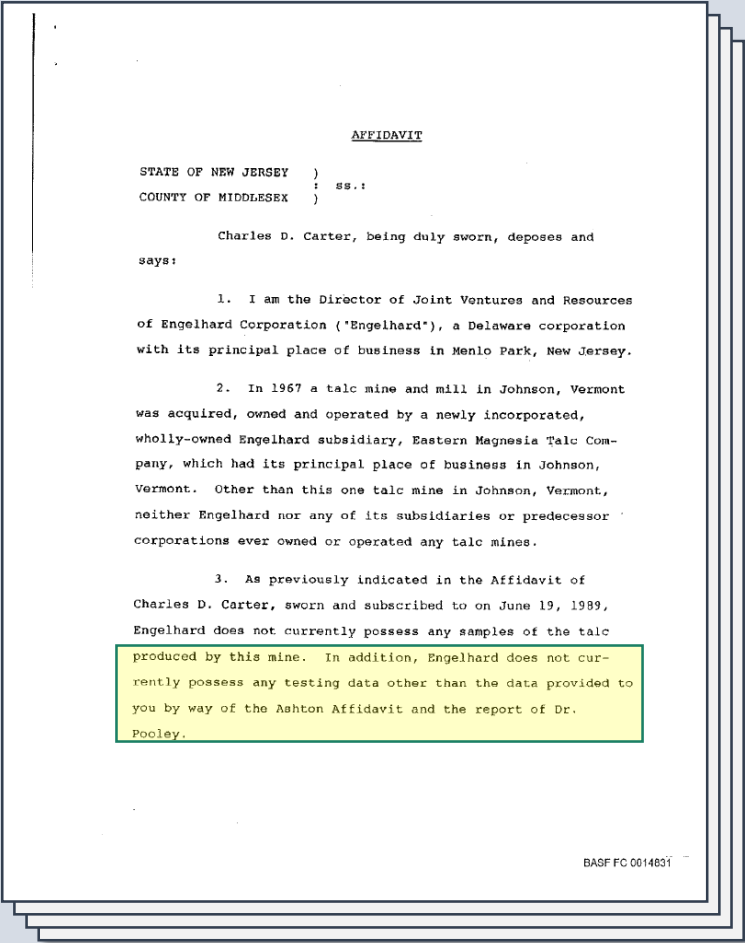
1. For thirty-five years, I was actively involved in investigating and studying the domestic and international talc industry and talc technology while employed by Johnson & Johnson. In the course of this work, I examined talc deposits in the United States and throughout the world. I graduated from the University of Pennsylvania in 1940 with a Bachelor of Science degree. My major field of study was chemistry; my minor fields of study were geology and mineralogy. I did graduate work at Louisiana State University and also received training in talc minerals at the Battelle Memorial Institute in Columbus, Ohio, which included consultations with the Geology Department of Ohio State University. I have been retired since 1984, but have remained an active member of various talc and mineral committees of the American Society for Testing and Materials and the International Standards Organization.

BASF 00001

3/16/1989	O'Shaughnessy, J.*	Dembrow, I.*	Memo and attachment reflecting joint defense communication regarding talc litigation.
4/4/1989	Dembrow, I.*	O'Shaughnessy, J.*; Sloane, P.*; Sarner, E.*	Memo providing legal analysis regarding preparation of Ashton affidavit.
4/4/1989	Dembrow, I.*	O'Shaughnessy, J.*; Sloane, P.*; Sarner, E.*	Letter containing attorney-client communication regarding Engelhard talc litigation.
4/17/1989	Friedman, J.*; Fliegel, L.*; Sloane, P.*	Dornbusch, A.*; Corbean, M.; Mueller, M.	Letter containing legal strategy regarding pending litigation and handwritten notes.
4/24/1989	Sloane, P.*; Silverman, L.*; Dembrow, I.*; Finnegan, K.*; Sarner, E.*	Dornbusch, A.*; Fliegel, L.*	Memo containing legal analysis regarding talc litigation case status and mental impressions of counsel.
4/25/1989	Dembrow, I.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Silverman, L.*	Memo and attachments transmitting status report and mental impressions of counsel regarding pending litigation.
4/26/1989	O'Shaughnessy, J.*	Dembrow, I.*	Status report transmitting attorney-client communication regarding Engelhard talc litigation.
4/28/1989	Sloane, P.*	Dornbusch, A.*	Letter transmitting attorney-client communication regarding Ashton affidavit.
4/28/1989	Sloane, P.*; Silverman, L.*; Dembrow, I.*; Finnegan, K.*	Insurers	Status report containing legal analysis regarding talc litigation.
5/1/1989	Dembrow, I.*	O'Shaughnessy, J.*; Sloane, P.*; Sarner, E.*	Letter and attachment containing attorney-client communication regarding Ashton affidavit.
5/5/1989	Dembrow, I.*	Ashton, W.; O'Shaughnessy, J.*; Sloane, P.*	Letter and attachment containing attorney-client communication regarding Ashton affidavit.
5/8/1989	Ashton, W.	Dembrow, I.*; O'Shaughnessy, J.*; Semple, B.	Letter containing attorney-client communication regarding Ashton affidavit.
5/16/1989	Sloane, P.*	DeVries, S.*	Letter seeking legal analysis regarding California talc litigation.
5/18/1989	Dembrow, I.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*	Memo and attachments transmitting W. Ashton affidavit.

**Ashton Affidavit**  
**5/8/1989**





7/27/1989	Komarnicki, V.*	Dembrow, I.*; Sarner, E.*	Letter transmitting correspondence and discovery responses in Pennsylvania talc litigation.
8/16/1989	Sloane, P.*	Dornbusch, A.*; Fliegel, L.*	Letter and attachment containing attorney-client communication regarding Pennsylvania talc litigation strategy.
8/16/1989	Sarner, E.*	Sloane, P.*	Memo and attachments containing impressions of counsel regarding Pennsylvania talc litigation strategy.
8/16/1989	Sloane, P.*	Dornbusch, A.*; Fliegel, L.*	Letter and attachments containing attorney-client communication regarding Pennsylvania talc litigation strategy.
8/17/1989	Sarner, E.*	Sloane, P.*	Fax with attachments containing mental impressions of counsel regarding Pennsylvania talc litigation.
8/18/1989	Carter, C.	LaTorre, L.; Dornbusch, A.*	Letter and attachment transmitting signed C. Carter affidavit.
8/22/1989	Sarner, E.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Dembrow, I.*	Letter containing attorney-client communication regarding Pennsylvania tireworkers' litigation.
8/22/1989	Sarner, E.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Dembrow, I.*; MH;	Letter containing attorney-client communication regarding Pennsylvania tireworkers' litigation.
8/22/1989	Sarner, E.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Dembrow, I.*	Letter containing attorney-client communication regarding Pennsylvania talc litigation.

Carter Affidavit  
8/18/1989

# Documents Related in Time to Asbestos in Mine Study

Case 2:11-cv-01754-BRM-AMF Document 521-29 Filed 05/17/18 Page 123 of 130 PageID:  
3633

CONFIDENTIAL

INTER-DEPARTMENT MEMORANDUM

TO: E.J. Triglia FROM: P.N. Gale DATE: April 11, 1979

SUBJECT: Talc Investigation - Review and Update

CONFIDENTIAL

The following is a review and update on the talc investigation which initiated in February 1979. The investigation itself concerns the identification of contaminants in a number of talc production samples using transmission electron microscopy.

Transmission electron microscopy investigations were undertaken at the Georgia Institute of Technology from February 12th to February 16th. One of the samples (79-J-1) investigated during this time was a talc production sample from the Baker mine in southern Quebec. A request had been made to examine this sample and determine the mineralogy and possible contaminants. A transmission electron microscope examination of this talc sample showed the presence of chrysotile fibers. The implication of this information prompted Mr. Howard Shafer to send for talc production samples to the Georgia Institute of Technology for electron microscopy investigations. Two of the samples (79-J-2, 79-J-3) were talc production samples from the Quebec operation.

Results from this investigation were presented on February 20th at a meeting attended by FJD, EJT, GAN, ALY, MJZ, JMS, and BSM. Based on the data reported, the following decisions were made in reference to the future course of action to be taken in the talc investigation:

1. Calculate the percent by weight of fiber in each sample.
2. Check the transmission electron microscopy data obtained at the Georgia Institute of Technology with transmission electron microscopy work on the same samples at the McCrone research institute.
3. Examine the Johnson mine and mill for the possible source of contaminants.
4. Conduct air sampling tests at the Johnson operation.
5. Attempt to develop a qualitative method for testing the amount of contaminants in production sample from Johnson.

Recently I have been adapting the NIOSH fiber counting method (phase contrast microscope) for airborne asbestos concentrations to bulk samples. The data generated will show the number of fibers >5µ with a 3 to 1 aspect ratio per sample. Furthermore, I will be checking each suspected "fiber" in polarized light in an attempt to identify the fiber itself. Fiber counting with the phase contrast microscope has been completed on bulk samples 79-J-2, 79-J-4 and Vertical XXX. The results and estimated values for airborne dust meeting TLV talc requirements are as follows:

Sample Number	Fibers/ng >5 microns	Fibers/cc	
		Present Talc TLV 3 6.7ng/m <sup>3</sup>	Proposed Talc TLV 1.5ng/m <sup>3</sup>
79-J-2	559	3750	840
79-J-4	754	5050	1130
Vertical XXX	1320	8800	2000

The quantitative data generated from the transmission electron microscope on the eight samples listed above are presented in Table I.

continued.

The following is a review and update on the talc investigation which was initiated in February 1979. The investigation itself concerns the identification of contaminants in a number of talc production samples using transmission electron microscopy.

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Thirty-eight mine crushed rock samples have been sent to the Georgia Institute of Technology for qualitative transmission electron microscopy investigations.

PRIV000321	3/28/1979	Yunko, A.	Brush, J.M.*; Hemstock, G.	Attorney-Client	Memo reflecting legal advice regarding talc testing.
PRIV001685	3/28/1979	Yunko, A.	Brush, J.*; Hemstock, G.	Attorney-Client	Memo reflecting request for legal advice from J. Brush* regarding talc testing.
PRIV001633	5/2/1979	Triglia, E.	Brush, J.M.*; Clarke, C.C.; Dzierzanowski, F.; Gale, P.;	Attorney-Client	Memo and attachments reflecting request for legal advice regarding talc testing.
PRIV001786	5/2/1979	Triglia, E.	Brush, J.*; Clark, C.; Dzierzanowski, F.; Gale, P.; Hemstock, G.; Jacobs,	Attorney-Client	Memo and attachments reflecting request for legal advice from J. Brush* regarding talc testing and product labeling.
PRIV001672	5/14/1979	Triglia, E.	Brush, J.*; Hemstock, G.; ALY; CCC; DAJ; FJD; JVK; MJZ; PNG	Attorney-Client	Memo reflecting request for legal advice from J. Brush* regarding talc testing.

# Documents From the Westfall Settlement to Purge Memo

Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 124 of 130 PageID: 51134

March 7, 1984  
Purge Memo

INTER-DEPARTMENT MEMORANDUM		Property of MAC Division		MINERALS & CHEMICALS DIVISION	
TO	All R&D Personnel	FROM	G. A. Hemstock	DATE	March 7, 1984
SUBJECT	DOCUMENT RETRIEVAL -- DISCONTINUED OPERATIONS				

It is the policy of Engelhard Corporation to avoid the undue accumulation of documents that are no longer likely to be needed in our business operations. The regular discarding of outdated business records keeps our storage costs down and enables Engelhard personnel to make more efficient use of those Company documents and files that are needed for current operations. As a first step in complying with this policy within the Research Department, please review your personal files and sort out all notebooks, duplicate copies of notebooks, technical service requests and responses, memoranda and reports that pertain to the following discontinued operations:

Engelhard Minerals Ltd.  
SCF (Societe Corneille Francois)

1/31/1984	Cahill, Gordon, & Reindel LLP*	Campo, B.*; Dornbusch, A.*	Draft letter containing impressions of counsel regarding auditor requests.
2/22/1984	Sloane, P.*	Kohn, I.*	Memo reflecting mental impressions of counsel regarding draft file preservation policy.
2/23/1984	Devine, R.	Dornbusch, A.*; Halket, T.*; Pagonis, J.; Sloane, P.*	Memo reflecting attorney-client communications regarding Westfall settlement payment.
2/24/1984	Cahill, Gordon, & Reindel LLP*	Dornbusch, A.*	Memo containing attorney-client communication regarding talc litigations
3/7/1984	Sloane, P.*	Kempko	Memo reflecting attorney-client communications and mental impressions of counsel regarding file preservation.
3/7/1984	Sloane, P.*	Kempko	Memo reflecting attorney-client communications and mental impressions of counsel regarding Engelhard talc file preservation.
3/7/1984	Sloane, P.*	Kempko	Memo reflecting attorney-client communications and mental impressions of counsel regarding file preservation.
3/7/1984	Sloane, P.*	Kempko	Memo reflecting attorney-client communications and mental impressions of counsel regarding file preservation.
3/7/1984	Sloane, P.*	Kempko	Memo reflecting attorney-client communications and mental impressions of counsel regarding file preservation.



# Documents From the Westfall Settlement to Purge Memo

Case 2:11-cv-01754-BRM-AME Document 521-29 Filed 05/17/18 Page 125 of 130 PageID: 51125

INTER-DEPARTMENT MEMORANDUM		Property of M&C Division		MINERALS & CHEMICALS DIVISION	
TO	All R&D Personnel	FROM	G. A. Hemstock	DATE	March 7, 1984
SUBJECT	DOCUMENT RETRIEVAL -- DISCONTINUED OPERATIONS				

It is the policy of Engelhard Corporation to avoid the undue accumulation of documents that are no longer likely to be needed in our business operations. The regular discarding of outdated business records keeps our storage costs down and enables Engelhard personnel to make more efficient use of those Company documents and files that are needed for current operations. As a first step in complying with this policy within the Research Department, please review your personal files and sort out all notebooks, duplicate copies of notebooks, technical service requests and responses, memoranda and reports that pertain to the following discontinued operations:

Engelhard Minerals Ltd.  
SCF (Societe Corneille Francois)  
Speedi Dri Corporation  
Ental  
Chemstone's Ferrovandium Operation  
Cuyahoga Lime Co.

All information contained in your files pertaining to these operations should be withdrawn and placed in file boxes for discard. Appropriate file boxes can be obtained from Chuck Hachat at extension 5072. Please keep these boxes in your office area, available for pick up on March 16, 1984. In the event that the notebook you are currently using contains information from these discontinued operations, please place it on the top of the box. All these notebooks will be returned to you on or before March 19th. Please understand that it is our intent to retain copies of those documents to be preserved from discontinued operations only in our central files and can be accessed there should the need arise.

Your cooperation in this matter is much appreciated.

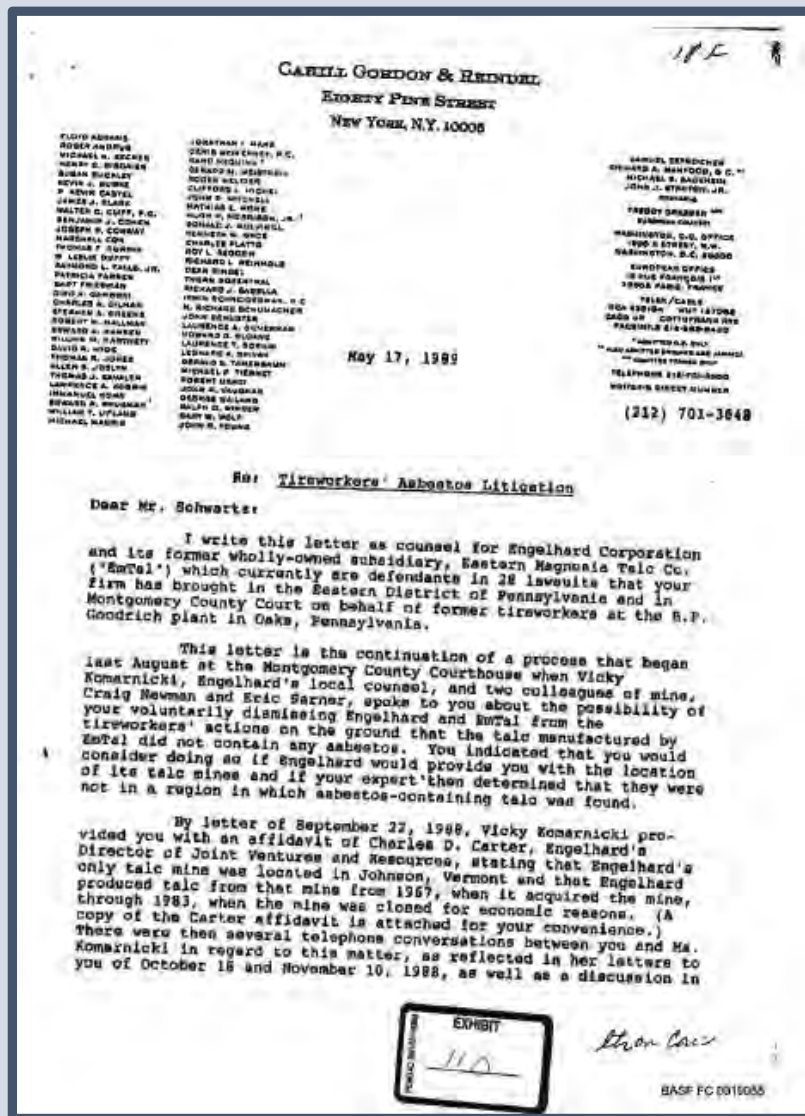
GAH:jf

DEPOSITION  
EXHIBIT  
P-67  
06/11-6-89

Distribution: L. Kolb	SIGNED: <i>J. A. Hemstock</i>
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10/28/1983	Sloane, P.*	Ilardi, J.	Letter containing communications with insurer, mental impressions of counsel and legal strategy regarding settlement in Westfall litigation.
10/28/1983	Orce, K.*	Dornbusch, A.*; Kohn, I.*; Halket, T.*	Letter to client reflecting legal advice and mental impressions of counsel regarding mine acquisition.
10/28/1983	Sloane, P.*	Ilardi, J.	Letter containing communications with insurer, mental impressions of counsel and legal strategy regarding settlement in Westfall litigation.
11/14/1983	Wiest, E.*	N/A	Memo to file providing legal advice regarding material safety data sheets.
11/14/1983	Wiest, E.*	N/A	Memo to file providing legal advice regarding material safety data sheets.
11/30/1983	Wiest, E.*	N/A	Memo to file containing legal research and analysis regarding government regulatory standards.
11/30/1983	Wiest, E.*	N/A	Memo to file containing legal research and analysis regarding government regulatory standards.
12/4/1983	Sloane, P.*	Dornbusch, A.*; Hyde, D.*; Kohn, I.*	Letter and attachments transmitting legal advice regarding government regulatory standards.
12/7/1983	Kennedy, P.*	Sloane, P.*	Letter reflecting mental impressions of counsel regarding documents in Westfall litigation.
12/7/1983	Kennedy, P.*	Sloane, P.*	Letter reflecting mental impressions of counsel regarding documents in Westfall litigation.
12/28/1983	Cahill, Gordon, & Reindel LLP*	N/A	Draft report reflecting mental impressions of counsel regarding draft records retention policy of Engelhard files.
12/29/1983	Wiest, E.*	N/A	Memo reflecting mental impressions of counsel regarding talc specifications and advertising.
1/4/1984	Cangelosi, M.	Sloane, P.*	Letter reflecting legal strategy and transmitting documents at the request of I. Halket regarding expert in Westfall litigation.
1/4/1984	Cangelosi, M.	Sloane, P.*	Letter reflecting legal strategy and transmitting documents at the request of T. Halket* regarding expert in Westfall litigation.
1/9/1984	Sloane, P.*	N/A	Memo to file reflecting attorney-client communications and mental impressions of counsel regarding Westfall litigation documents.
1/9/1984	Sloane, P.*	N/A	Memo to file reflecting attorney-client communications and mental impressions of counsel regarding Westfall litigation documents.
1/9/1984	Sloane, P.*	N/A	Memo to file reflecting attorney-client communications and mental impressions of counsel regarding Westfall litigation documents.
1/13/1984	Cahill, Gordon, & Reindel LLP*	N/A	Memo regarding legal services rendered in talc litigation.
1/30/1984	Sloane, P.*	Orce, K.*	Memo containing impressions of counsel regarding auditor requests.

## Documents Related Directly to Fraudulent Misrepresentations



5/18/1989	Dembrow, I.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*	Memo and attachments transmitting W. Ashton affidavit.
5/18/1989	Dembrow, I.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*	Letter containing attorney-client communication regarding Engelhard talc Pennsylvania case.
5/24/1989	Dornbusch, A.*	Friedman, J.*; Sloane, P.*; Dembrow, I.*; Fliegel, L.*	Letter seeking legal advice regarding pending California litigation.
6/2/1989	Dembrow, I.*	DeVries, S.*; Sloane, P.*	Letter and attachment seeking legal advice regarding California litigation.
6/7/1989	Dembrow, I.*	N/A	Memo seeking legal analysis regarding requests by plaintiffs' counsel in Pennsylvania talc case.
6/14/1989	Schwartz, J.*; Rothenberg, A.*	Komarnicki, V.*; Dembrow, I.*	Handwritten notes reflecting mental impressions of counsel regarding talc litigation strategy.
6/16/1989	Dembrow, I.*	Carter, C.; Sloane, P.*	Letter and attachments containing draft pleadings in Pennsylvania talc litigation.
6/20/1989	Komarnicki, V.*	Dembrow, I.*; Sarnar, E.*	Letter containing mental impressions of counsel regarding Pennsylvania talc litigation.
6/20/1989	Sloane, P.*; Silverman, L.*; Dembrow, I.*; Finnegan, K.*	Dornbusch, A.*; Fliegel, L.*	Status report transmitting mental impressions of counsel regarding pending litigation.
6/20/1989	Sloane, P.*; Silverman, L.*; Dembrow, I.*; Finnegan, K.*	Dornbusch, A.*; Fliegel, L.*	Status report transmitting mental impressions of counsel regarding pending litigation.
7/12/1989	Sarnar, E.*	Sloane, P.*; Dembrow, I.*; Komarnicki, V.*	Memo seeking legal analysis regarding requests by plaintiffs' counsel in Pennsylvania talc case.
7/17/1989	Cahill, Gordon, & Reindel LLP*	N/A	Memo regarding legal services rendered.
7/19/1989	Schwartz, J.*	Sarnar, E.*; Komarnicki, V.*; Dembrow, I.*	Handwritten notes reflecting mental impressions of counsel regarding talc litigation.
7/27/1989	Komarnicki, V.*	Dembrow, I.*; Sarnar, E.*	Letter transmitting correspondence and discovery responses in Pennsylvania talc litigation.
8/16/1989	Sloane, P.*	Dornbusch, A.*; Fliegel, L.*	Letter and attachment containing attorney-client communication regarding Pennsylvania talc litigation strategy.
8/16/1989	Sarnar, E.*	Sloane, P.*	Memo and attachments containing impressions of counsel regarding Pennsylvania talc litigation strategy.
8/16/1989	Sloane, P.*	Dornbusch, A.*; Fliegel, L.*	Letter and attachments containing attorney-client communication regarding Pennsylvania talc litigation strategy.

## Documents Related in Time to Fraudulent Misrepresentations

LITTLETON JOYCE  
UGHETTA PARK & KELLY LLP  
NEW YORK CITY | PURCHASE, NY | RED BANK, NJ

Direct Dial: (732) 933-2730  
robert.kelly@littletonjoyce.com

March 28, 2008

Rachel A. Placitella, Esq.  
Cohen, Placitella & Roth, P.C.  
127 Maple Avenue  
Red Bank, NJ 07701

Re: Angeline Comandini vs. Asbestos Corporation Limited, et als  
Docket Nos. : MID-L-4398-07 AS  
Our File No. : 08951.00005  
Vivian Volk vs. Asbestos Corporation Limited, et als  
Docket Nos. : MID-L-10012-07 AS  
Our File No. : 08951.00004  
Joanne Fuschino, et al. vs. Asbestos Corporation Limited, et als  
Docket Nos. : MID-L-10899-07 AS  
Our File No. : 08951.00006

Dear Ms. Placitella:

As you are aware, this office represents Defendants Eastern Magnesite Talc ("EMTAL") (now known as Pita Realty Ltd.) and BASF Catalysts LLC ("BASF") in the above referenced matters. Enclosed herewith are the various Notices of Adoption of the Standard Answer recently filed on behalf of our clients. As set forth in the pleadings and in further detail below, EMTAL and BASF did not manufacture asbestos-containing talc. Accordingly, we hereby request that the plaintiffs voluntarily dismiss with prejudice their complaint against our clients.

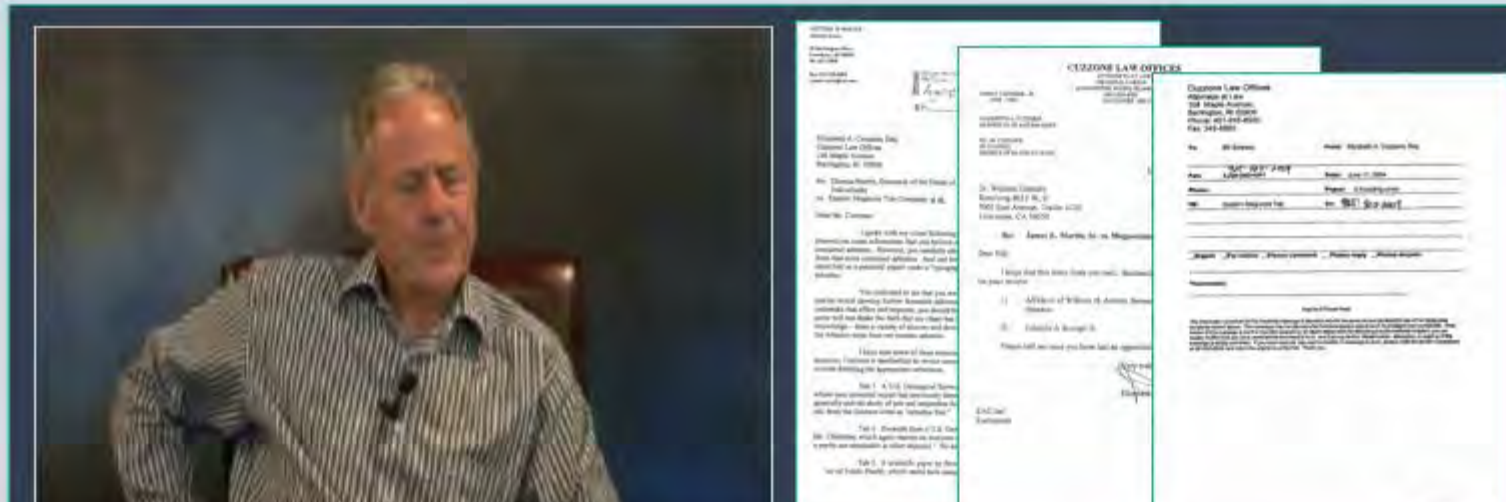
Attached hereto is an Affidavit from William H. Ashton that sets forth the history of the Vermont talc mines and more specifically, the history of the talc mined by Englehard Corporation (and its predecessors) from the talc mine located in Johnson, Vermont (the "Johnson mine"). As set forth in Mr. Ashton's Affidavit, after numerous investigations, examinations and studies of the Johnson mine, spanning more than fifty (50) years, it has been conclusively established that the talc from the Johnson mine does not contain asbestos. As such, there is no reasonable basis to support proceeding with the plaintiffs' claims against EMTAL and BASF.

Pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1, we hereby demand that the complaints be voluntarily dismissed because, based on the foregoing, the allegations against EMTAL and BASF are frivolous. If the plaintiffs fail to comply with this request within twenty eight (28)

12/28/2007	Greenberg, J.*	Stryker, D.*; Brophy, M.*	Email transmitting legal strategy regarding New Jersey talc litigation.
1/4/2008	Sullivan, M.*	Dembrow, I.*	Email and attachments transmitting mental impressions of counsel regarding pending litigation.
1/22/2008	Dembrow, I.*	Sullivan, M.*; Sloane, P.*	Email and attachment containing mental impressions of counsel regarding Fuschino matter.
3/13/2008	Garcia, G.	Brophy, M.*	Email and attachment containing indices regarding pending and anticipated litigation.
3/13/2008	Brophy, M.*	N/A	Email and attachment containing legal analysis regarding defense of Emtal claims.



## Documents Related to Martin Case



7/22/2005	Dembrow, I.*	Sullivan, M.*	Email containing legal strategy regarding Cahill, Gordon, & Reindel LLP's review of Westfall depositions.
8/1/2005	Sloane, P.*	Spivak, L.*	Email containing legal strategy regarding Engelhard Martin case.
8/4/2005	Sullivan, M.*	Hassett, M.*; Spivak, L.*; Sloane, P.*	Email containing attorney-client communication regarding California and Rhode Island talc litigation.
8/10/2005	Merten, H.*	Spivak, L.*; Hassett, M.*; Sloane, P.*; Sullivan, M.*	Email containing attorney-client communication regarding discovery in Martin litigation.
9/1/2005	Merten, H.*	Spivak, L.*; Sloane, P.*; Sullivan, M.*; Hassett, M.*	Email containing attorney-client communication regarding Martin deposition exchange and strategy.
9/1/2005	Spivak, L.*	Merten, H.*; Sloane, P.*; Sullivan, M.*; Silver, E.*	Email containing mental impression of counsel regarding Rhode Island talc litigation.
9/7/2005	Cahill, Gordon, & Reindel LLP*	N/A	Report reflecting legal services rendered in defense of Emtal claims.
11/4/2005	Dembrow, I.*	Spivak, L.*; Sloane, P.*; Silver, E.*; Sullivan, M.*	Email containing mental impressions of counsel regarding interview with R. Miller.
11/9/2005	Spivak, L.*	Merten, H.*; Sloane, P.*; Sullivan, M.*; Dembrow, I.*	Email containing mental impressions of counsel regarding Engelhard Martin (Rhode Island) litigation.
12/14/2005	Cahill, Gordon, & Reindel LLP*	N/A	Status Report containing legal analysis regarding pending litigations.
12/16/2005	Spivak, L.*	Hassett, M.*; Merten, H.*; Sullivan, M.*; Sloane, P.*	Email containing attorney-client communication regarding Martin talc litigation.
12/16/2005	Sullivan, M.*	Spivak, L.*; Hassett, M.*; Merten, H.*; Sloane, P.*; Dornbusch, A.*	Email reflecting attorney-client communication regarding pending Emtal litigation.
12/19/2005	Spivak, L.*	Sullivan, M.*; Dembrow, I.*	Email chain containing attorney-client communication regarding legal strategy in the Martin litigation.
12/19/2005	Spivak, L.*	Sullivan, M.*; Dembrow, I.*	Email chain containing attorney-client communication regarding legal strategy in the Martin litigation.
1/3/2006	Sullivan, M.*	Spivak, L.*; Dembrow, I.*	Email and attachment regarding status of former Emtal employees.

By way of background, efforts to have our client litigated. In short, we have every item of information they have requested to demonstrate both

7/27/1989	Komarnicki, V.*	Dembrow, I.*; Sarner, E.*	Letter transmitting correspondence and discovery responses in Pennsylvania talc litigation.
8/16/1989	Sloane, P.*	Dornbusch, A.*; Fliegel, L.*	Letter and attachment containing attorney-client communication regarding Pennsylvania talc litigation strategy.
8/16/1989	Sarner, E.*	Sloane, P.*	Memo and attachments containing impressions of counsel regarding Pennsylvania talc litigation strategy.
8/16/1989	Sloane, P.*	Dornbusch, A.*; Fliegel, L.*	Letter and attachments containing attorney-client communication regarding Pennsylvania talc litigation strategy.
8/17/1989	Sarner, E.*	Sloane, P.*	Fax with attachments containing mental impressions of counsel regarding Pennsylvania talc litigation.
8/18/1989	Carter, C.	LaTorre, L.; Dornbusch, A.*	Letter and attachment transmitting signed C. Carter affidavit.
8/22/1989	Sarner, E.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Dembrow, I.*	Letter containing attorney-client communication regarding Pennsylvania tireworkers' litigation.
8/22/1989	Sarner, E.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Dembrow, I.*; MH;	Letter containing attorney-client communication regarding Pennsylvania tireworkers' litigation.
8/22/1989	Sarner, E.*	Dornbusch, A.*; Fliegel, L.*; Sloane, P.*; Dembrow, I.*	Letter containing attorney-client communication regarding Pennsylvania talc litigation.

### Ex. 18

# Documents Related in Time to Fraud Discovery in 2009

6/16/2009	Sloane, P.*	Dembrow, I.*; Sullivan, M.*	Email containing attorney-client communication regarding deposition of D. Swanson in Paduano case.
6/16/2009	Kelly, R.*	Greenberg, J.*; Egler, T.*; Delaney, C.*	Email containing attorney-client communication regarding deposition of D. Swanson in Paduano case.
6/16/2009	Greenberg, J.*	Delaney, C.*; Behm, E.	Email containing attorney-client communication regarding talc litigation strategy in Paduano case.
6/16/2009	Sloane, P.*	Dembrow, I.*; Sullivan, M.*	Email containing attorney-client communication regarding deposition of D. Swanson in Paduano case.
6/18/2009	Stryker, D.*	Delaney, C.*; Dembrow, I.*; Sloane, P.*; Kelly, R.*; Littleton, R.*	Email containing attorney-client communication regarding deposition of D. Swanson in Paduano case.
6/18/2009	Dembrow, I.*	Sloane, P.*; Sullivan, M.*	Email and attachment containing legal analysis regarding talc litigation.
6/22/2009	Kelly, R.*	Delaney, C.*	Email containing attorney-client communication regarding deposition of D. Swanson in Paduano case.
7/7/2009	Dembrow, I.*	Kelly, R.*; Delaney, C.*; Coleman, L.*	Email containing attorney-client communication regarding discovery in New Jersey talc cases.
7/13/2009	Littleton, R.*	Stryker, D.*; Sloan, P.*; Egler, T.*	Email reflecting mental impressions of counsel regarding discussion with A. Dornbusch* regarding Paduano case.
7/16/2009	Bernardi, S.*	Barron, S.	Email and attachments containing mental impressions of counsel regarding pending silica and talc litigation.
7/22/2009	Prevete, J.*	McCloud, C.*; Desai, S.*	Email and attachment transmitting legal analysis regarding summaries of claims and mental impressions of counsel.
8/3/2009	Bernardi, S.*	Coppola, M.; Greenberg, J.*; Bernardi, S.*; Bernardi, S.*	Email and attachment containing attorney-client communication regarding status of talc litigation.

**“discussion with A. Dornbusch regarding Paduano case”**

